OCT 12 1982
1024-B Y4.P96/11:97-56

TO AMEND THE SOLID WASTE DISPOSAL ACT (H.R. 6307)

ORIGINAL

COAST GUARD AUTHORIZATION ACT (H.R. 5617)

Y4.P96/11:97-56 (97-56)

COMPLETED

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 6307

TO AMEND THE SOLID WASTE DISPOSAL ACT TO AUTHORIZE APPROPRIATIONS FOR THE FISCAL YEARS 1983 AND 1984, AND FOR OTHER PURPOSES

H.R. 5617

TO AUTHORIZE APPROPRIATIONS FOR THE COAST GUARD FOR FISCAL YEARS 1983 AND 1984, AND FOR OTHER PURPOSES

MAY 26, 1982

Printed for the use of the Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
96-266 O WASHINGTON : 1982

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97TH CONGRESS
2D SESSION

H. R. 6307

[Report No. 97–570]

To amend the Solid Waste Disposal Act to authorize appropriations for the fiscal years 1983 and 1984, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1982

Mr. FLORIO introduced the following bill; which was referred to the Committee on Energy and Commerce

MAY 18, 1982

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 21, 1982

Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Public Works and Transportation for a period ending not later than June 4, 1982, for consideration of such provisions of section 4 and section 9 of the amendment recommended by the Committee on Energy and Commerce as fall within the jurisdiction of the Committee on Public Works and Transportation pursuant to clause 1(p), Rule X

[For text of introduced bill, see copy of bill as introduced on May 6, 1982]

A BILL

To amend the Solid Waste Disposal Act to authorize appropriations for the fiscal years 1983 and 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1983 AND 1984

SECTION 1. This Act may be cited as the "Resource Conservation and Recovery Act Reauthorization Act of 1982".

SEC. 2. (a) GENERAL AUTHORIZATION.—Section 2007(a) of the Solid Waste Disposal Act is amended by striking out "and $80,000,000 for the fiscal year ending September 30, 1982" and substituting "$80,000,000 for the fiscal year ending September 30, 1982, $44,520,000 for the fiscal year ending September 30, 1983, and $44,520,000 for the fiscal year ending September 30, 1984".

(b) STATE HAZARDOUS WASTE PROGRAMS.—Section 3011(a) of such Act is amended by striking out "and $40,000,000 for the fiscal year 1982" and substituting "$40,000,000 for the fiscal year 1982, $40,000,000 for the fiscal year 1983, and $40,000,000 for the fiscal year 1984".

(c) HAZARDOUS WASTE SITE INVENTORY.—Section 3012 of such Act (relating to the hazardous waste inventory) is amended by—

(1) redesignating such section (and the corresponding reference thereto in the table of contents) as "Section 3012A."; and

(2) by striking out "$20,000,000" in subsection (c)(2) and inserting in lieu thereof "$10,000,000 for the fiscal year 1983, and $10,000,000 for the fiscal year 1984".

(d) Development and Implementation Assistance.—Section 4008(a)(1) of such Act is amended by striking out "and $20,000,000 for fiscal year 1982" and substituting "$20,000,000 for the fiscal year 1982, $10,000,000 for fiscal year 1983, and $10,000,000 for fiscal year 1984".

(e) Implementation Assistance.—Section 4008 (a)(2)(C) of such Act is amended by striking out "and $10,000,000 for fiscal year 1982" and substituting "$2,000,000 for the fiscal year 1982, $2,000,000 for fiscal year 1983, and $2,000,000 for fiscal year 1984".

(f) Special Communities.—Section 4008(e)(2) of such Act is amended by striking out "and $1,500,000 for each of the fiscal years 1981 and 1982" and substituting ", $1,500,000 for each of the fiscal years 1981 and 1982, $500,000 for the fiscal year 1983 and $500,000 for the fiscal year 1984".

(g) Assistance to States for Recycled Oil Programs—Section 4008 of such Act is amended—

(1) by redesignating subsection (f) (relating to assistance to municipalities for energy and materials

conservation and recovery planning activities) as subsection (g); and

(2) in paragraph (4) of subsection (f) (relating to assistance to States for discretionary programs for recycled oil) by striking out "and $5,000,000 for fiscal year 1983" and substituting "$5,000,000 for fiscal year 1983 and $3,000,000 for fiscal year 1984".

(h) DEPARTMENT OF COMMERCE FUNCTIONS.—Section 5006 of such Act is amended by inserting after "1982" the following "$1,500,000 for fiscal year 1983, and $1,500,000 for fiscal year 1984".

SMALL QUANTITY GENERATORS

SEC. 3. Section 3001 of the Solid Waste Disposal Act is amended by adding the following at the end thereof:

"(d) SMALL QUANTITY GENERATOR WASTE.—(1) After the date eighteen months after the date of the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, no hazardous waste which is generated by any generator in a quantity greater than one hundred kilograms during any calendar month shall be exempt, by reason of the small quantity generated, from standards under this subtitle.

"(2) Not later than eighteen months after the date of the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, the Administrator shall pro-

mulgate standards under sections 3002, 3003, and 3004 for hazardous waste which is generated during any calendar month by any generator in a quantity greater than one hundred kilograms but less than one thousand kilograms. Such standards may vary from the standards applicable to hazardous waste generated in larger quantities to the extent that the Administrator deems such variation necessary by reason of the smaller capacity of the facilities concerned.

"(3) The Administrator may promulgate regulations under this subtitle which establish special standards for, or exempt from regulation, hazardous wastes which are generated by any generator in a quantity less than one hundred kilograms during any calendar month.

"(4) Nothing in this subsection shall be construed to affect or impair the validity of regulations of the Administrator promulgated prior to the date of the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982 with respect to hazardous waste generated by generators of less than one thousand kilograms per month of hazardous waste, except that after the date eighteen months after such date of enactment, such prior regulations shall not apply to hazardous waste generated by generators which generate more than minimal quantities (one hundred kilograms or less) of hazardous waste per month.".

HAZARDOUS WASTE MIXED WITH DOMESTIC SEWAGE

SEC. 4. The Administrator of the Environmental Protection Agency shall, not later than two years after the date of the enactment of this Act, submit a report to the Congress concerning hazardous wastes identified or listed under section 3001 of the Solid Waste Disposal Act which are excluded from regulation pursuant to subtitle C of the Solid Waste Disposal Act under regulations exempting mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. Such report shall specify the types and quantities of such hazardous wastes which are exempted pursuant to such regulations and shall include recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health and the environment from the hazards associated with such wastes or whether regulation of such mixtures under subtitle C of the Solid Waste Disposal Act is necessary for such purpose. Not later than one year after the date of the enactment of this section, the Administrator shall submit to Congress a notice setting forth the progress made on the report required under this section.

HAZARDOUS WASTE INJECTION; LIQUIDS IN LANDFILLS

SEC. 5. Section 3004 of the Solid Waste Disposal Act is amended by inserting "(a) IN GENERAL.—" after "3004." and by adding the following at the end thereof:

"(b) HAZARDOUS WASTE INJECTION.—(1) Six months after the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, the disposal of hazardous waste by injection through a class IV well into an underground source of drinking water is prohibited. Six months after such date of enactment, disposal of hazardous waste by injection through a class IV well which is above an underground source of drinking water is prohibited until such practices are regulated by State programs or by the Administrator pursuant to section 1422 of the Safe Drinking Water Act. For purposes of this subsection, the terms 'underground source of drinking water' and 'class IV well' shall have the same meaning as provided in regulations of the Administrator under the Safe Drinking Water Act.

"(2) Nothing in paragraph (1) shall affect any well which injects fluids:

"(A) which are brought to the surface in connection with conventional oil or natural gas production;

"(B) for enhanced recovery of oil or natural gas; or

"(C) for storage of hydrocarbons which are liquid at standard temperature and pressure.

"(3) Nothing in paragraph (1) shall affect any well which injects fluids for extraction of minerals or energy, including, but not limited to:

"(A) mining of sulfur by the Frasch process;

"(B) solution mining of minerals;

"(C) in-situ combustion of fossil fuel; and

"(D) recovery of geothermal energy to produce electric power.

"(c) LIQUIDS IN LANDFILLS.—Not later than one year after the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, the Administrator shall promulgate final regulations which minimize the disposal of liquid hazardous waste, and free liquids contained in hazardous waste, in landfills. Pending promulgation of such regulations, the Administrator shall maintain the current requirements in regulations under this section respecting the disposal in landfills of liquid hazardous waste and free liquids contained in hazardous waste.

"(d) LANDFILL REPORTS.—The Administrator shall, at annual intervals, not later than one year, and not later than two years, after the date of the enactment of this subsection, submit a report to the Congress identifying which types of hazardous waste should, and what types of such waste should not, be deemed suitable for land disposal.".

BURNING AND BLENDING OF HAZARDOUS WASTES AS FUEL

SEC. 6. (a) NOTICE.—(1) Section 3010 of such Act is amended by inserting the following after the first sentence *thereof: "Not later than nine months after the date of the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982—*

"(1) the owner or operator of any facility which produces a fuel from any substance identified or listed under section 3001 and any other material;

"(2) the owner or operator of any facility which burns, for purposes of energy recovery, any substance identified or listed under section 3001; and

"(3) any person who distributes or markets a fuel that (A) contains any substance identified or listed under section 3001 or (B) is produced by any person referred to in paragraph (1)

shall file with the Administrator a notification stating the location and general description of the facility, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. Notification shall not be required under paragraph (2) of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous *waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 3001(b)(3).".*

(2) Section 3010 is amended by striking out "the preceding sentence" and substituting "the preceding provisions".

(b) STANDARDS.—Section 3004 of such Act is amended by adding the following at the end thereof:

"(e) HAZARDOUS WASTE USED AS FUEL.—Not later than two years after the date of the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

"(1) standards applicable to the owners and operators of facilities which produce a fuel from any substance identified or listed under section 3001 and any other material;

"(2) standards applicable to the owners and operators of facilities which burn for purposes of energy recovery any substance identified or listed under section 3001; and

"(3) standards applicable to persons who distribute or market a fuel that (A) contains any substance identifed or listed under section 3001 or (B) is produced by any person referred to in paragraph (1)

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) as may be appropriate. Nothing in this section shall be construed to affect or impair the provisions of section 300(b)(3).".

SECTION 3005 PERMITS

SEC. 7. (a) FINAL PERMITS.—Section 3005 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(g) RELEASES.—Any permit (other than a permit treated as issued pursuant to subsection (e)) issued to a treatment, storage, or disposal facility under section 3005 (or under an authorized State hazardous waste program under section 3006) shall, in addition to other applicable requirements, address any release of hazardous waste from such facility which occurs prior to the date of issuance of such permit.".

"(b) EXPANSION DURING INTERIM STATUS.—Section 3005(e) of such Act is amended by adding the following at the end thereof: "The Administrator shall promulgate regulations under which any owner or operator of a treatment, storage, or disposal facility operating under interim status pursuant to this subsection who expands the capacity of the facility (except the capacity for storage or treatment in tanks or

containers) by an amount in excess of 10 per centum of the capacity specified in the permit application shall be required to obtain a permit under other provisions of this section prior to construction of such expansion. The regulations of the Administrator under this subsection may, in the discretion of the Administrator, contain standards for facilities which expand such capacity by 10 per centum or less and such standards may vary from the standards applicable to those facilities operating pursuant to a permit under this subsection which do not expand such capacity.".

TIMETABLE FOR REVIEW OF EPA PERMIT APPLICATIONS

SEC. 8. Section 3005(c) of the Solid Waste Disposal Act is amended by inserting "(1)" after "PERMIT ISSUANCE.—" and by adding the following new paragraph at the end thereof:

"(2)(A) Not later than the date four years after the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, in the case of each application for a permit for a land disposal facility under this section which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

"(B) Not later than the date six years after the enactment of the Resource Conservation and Recovery Act Reauthorization Act of 1982, in the case of each application

for a permit for any facility under this section (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

"(C) The time periods specified in this paragraph shall not apply in the case of any State which is administering an authorized hazardous waste program under section 3006. Interim status under subsection (e) shall terminate for each facility referred to in subparagraph (A) or (B) on the expiration of the four- or six-year period referred to in subparagraph (A) or (B), whichever is applicable, unless an application is filed for a permit under other provisions of this subsection within such four-year or six-year period, as the case may be.".

NATIONAL GROUNDWATER COMMISSION

SEC. 9. (a) ESTABLISHMENT.—There is established a commission to be known as the National Groundwater Commission (hereinafter in this section referred to as the "Commission").

(b) DUTIES OF COMMISSION.—The duties of the Commission are to:

(1) Assess the scope and nature of the relationship between groundwater contamination from hazardous waste and solid waste and groundwater overdrafting

problems in order to develop projections of available, usable groundwater in future years on a nationwide basis.

(2) Assess methods used by State and Federal agencies to measure and monitor amounts of groundwater contamination from hazardous waste and assess the adequacy of existing standards for groundwater quality under State and Federal law.

(3) Assess the need for a policy to protect groundwater from degradation due to hazadous waste contamination.

(4) Assess the adequacy of the present understanding of groundwater recharge zones and sole source aquifers and assess the adequacy of knowledge regarding the interrelationship of designated aquifers and recharge zones.

(5) Assess the role of land-use patterns and underground injection practices as these relate to protecting groundwater from hazardous waste contamination.

(6) Assess methods for remedial abatement of groundwater contamination from hazardous waste as well as the costs and benefits of cleaning up polluted groundwater and compare cleanup costs to the costs of substitute water supply methods.

(7) Assess and compare Federal authority and mechanisms and the authority and mechanisms of the States in protecting groundwater.

(8) Investigate policies and actions taken by foreign governments to protect groundwater from hazardous waste.

(9) Assess the use and effectiveness of existing interstate compacts to address groundwater protection from hazardous waste.

(10) Analyze existing legal rights and remedies regarding contamination of groundwater from hazardous waste.

(c) MEMBERSHIP.—(1) The Commission shall be composed of thirteen members as follows:

(A) Four appointed by the Speaker of the United States House of Representatives from among the Members of the House of Representatives;

(B) Four appointed by the majority leader of the United States Senate from among the Members of the United States Senate;

(C) Four appointed by the President as follows:

(i) One from among a list of nominations submitted to the President by the National Governors Association;

(ii) One from among a list of nominations submitted to the President by the National Academy of Sciences;

(iii) One from among a list of nominations submitted to the President by groups, organizations, or associations of industries the activities of which may affect groundwater; and

(iv) One from among a list of nominations submitted to the President from groups, organizations, or associations of citizens which are representative of persons concerned with pollution and environmental issues and which have participated, at the State or Federal level, in studies, administrative proceedings, or litigation (or any combination thereof) relating to groundwater; and

(D) the Director of the Office of Technology Assessment.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Appointments may be made under this subsection without regard to section 5311(b) of title 5, United States Code. Not more than two of the four members appointed under subparagraph (A) and not more than two of the four members appointed under subparagraph (B) may be of the same political party. No member *appointed under paragraph (C) may be an officer or employee of the Federal Government.*

(2) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for not longer than the ninety-day period beginning on the date he leaves that office or becomes such an officer or employee, as the case may be.

(3) Members shall be appointed for the life of the Commission.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be entitled to receive the daily equivalent of the maximum annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are al-

lowed expenses under section 5703 of title 5 of the United States Code.

(B) Members of the Commission who are Members of the Congress shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(5) Five members of the Commission shall constitute a quorum but two may hold hearings.

(6) The Chairman of the Commission shall be elected by the members of the Commission and shall serve for the life of the Commission unless he ceases to be a member of the Commission before the termination of the Commission.

(7) The Commission shall meet at the call of the Chairman or a majority of its members.

(d) DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—(1) The Commission shall have a Director who shall be appointed by the Chairman, without regard to section 5311(b) of title 5, United States Code.

(2) The Chairman may appoint and fix the pay of such additional personnel as the Chairman considers appropriate.

(3) With the approval of the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code.

(4) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable

basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section.

(e) POWERS OF COMMISSION.—(1) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(5) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(f) REPORT.—The Commission shall transmit to the President and to each House of the Congress a report not later than October 30, 1986. The report shall contain a de-

tailed statement of the findings and conclusions of the Commission with respect to each item listed in subsection (b), together with its recommendations for such legislation, and administrative actions, as it considers appropriate.

(g) TERMINATION.—The Commission shall cease to exist on October 30, 1986.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the fiscal years 1983 through 1986 not to exceed $10,000,000 to carry out this section.

PRESERVATION OF OTHER RIGHTS

SEC. 10. Section 7002(f) of the Solid Waste Disposal Act is amended by striking out "section" and substituting "Act".

BENEFICIAL USE OF HAZARDOUS WASTE

SEC. 11. Section 1004(27) is amended by adding the following at the end thereof: "The Administrator shall promulgate regulations to ensure that the beneficial use, reuse, recycling, or reclamation of substances identified or listed under section 3001 is conducted in such manner as necessary to protect human health and the environment.".

I

97TH CONGRESS
2D SESSION

H. R. 5617

To authorize appropriations for the Coast Guard for fiscal years 1983 and 1984, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1982

Mr. STUDDS (for himself, Mr. JONES of North Carolina, Mr. YOUNG of Alaska, and Ms. MIKULSKI) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

---

A BILL

To authorize appropriations for the Coast Guard for fiscal years 1983 and 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Coast Guard Authorization Act for 1983 and 1984".

SEC. 2. Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal years 1983 and 1984 as follows:

(1) For the operation and maintenance of the Coast Guard, including expenses related to the Cape-

hart housing debt reduction, $1,842,000,000 for fiscal year 1983 and $2,026,000,000 for fiscal year 1984.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto, $670,000,000 for fiscal year 1983 and $700,000,000 for fiscal year 1984.

(3) For research, development, test, and evaluation, $30,000,000 for fiscal year 1983 and $33,000,000 for fiscal year 1984, of which sufficient funds shall be made available to continue in operation a Coast Guard research and development center through the end of fiscal year 1984.

SEC. 3. For fiscal years 1983 and 1984, the Coast Guard is authorized an end-of-year strength for active duty personnel of forty-one thousand five hundred. This end-of-year strength shall not include members of the Ready Reserve called to active duty under the authority of section 712 of title 14, United States Code.

SEC. 4. For fiscal years 1983 and 1984, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, three thousand six hundred and sixty student-years.

(2) For flight training, one hundred and eighteen student-years.

(3) For professional training in military and civilian institutions, six hundred and fifty-five student-years.

(4) For officer acquisition, one thousand thirty-eight student-years.

SEC. 5. (a) Section 81 of title 14, United States Code, is amended by adding at the end thereof the following: "The Coast Guard may establish, maintain, and operate aids to maritime navigation under paragraph (1) of this section by contract with any person, public body, or instrumentality.".

(b) Section 84 of title 14, United States Code, is amended by inserting after the first sentence the following: "The preceding sentence shall not apply to any person, public body, or instrumentality acting pursuant to a contract under section 81 of this title or pursuant to authority obtained under section 83 of this title.".

(c) It is the sense of Congress that the establishment, maintenance, and operation of maritime aids to navigation on the inland waterways of the United States can be accomplished by civilian employees of the Coast Guard more effectively than by military members of the Coast Guard. Accordingly, Congress recommends that the Coast Guard increase significantly the ratio of civilian to military employees assigned to these tasks.

(d) Not later than one year after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit a report to the Congress evaluating—

(1) the exercise by contract of the authority of the Coast Guard under section 81 of title 14, United States Code, to establish, maintain, and operate aids to navigation, insofar as such authority relates to the inland waterways of the United States, including a discussion of any problems involved in exercising such authority by contract, the reasons for exercising or failing to exercise such authority by contract in particular areas, and the feasibility of expanding the exercise of such authority by contract; and

(2) the advantages and disadvantages of increasing the ratio of civilian to military employees assigned to the establishment, maintenance, and operation of aids to navigation on the inland waterways of the United States.

SEC. 6. Subsections (e) and (f) of section 475 of title 14, United States Code, are repealed.

SEC. 7. Section 9 of the Presidential Protection Assistance Act of 1976 (90 Stat. 2476) is amended by striking out

"Director, Secretary of Defense, and the Commandant of the Coast Guard" and inserting in lieu thereof "Director and Secretary of Defense" and by striking out "Secret Service, the Department of Defense, and the Coast Guard" and inserting in lieu thereof "Secret Service and the Department of Defense".

SEC. 8. The Act entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes" (54 Stat. 497; 33 U.S.C. 511 et seq.) is amended as follows:

(1) Section 5 (33 U.S.C. 515) is repealed.

(2) Section 6 (33 U.S.C. 516) is amended to read as follows:

"CONTRIBUTION

"SEC. 6. In the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation.".

(3) Section 7 (33 U.S.C. 517) is repealed.

(4) Section 12 (33 U.S.C. 522) is amended by striking out subsections (b) and (c), by striking out "(a)" after "SEC. 12.", and by striking out ", except to the extent provided in this section".

(5) Section 13 (33 U.S.C. 523) is amended by striking out all that follows "Secretary" the second place it appears and inserting in lieu thereof a period.

SEC. 9. (a) Section 502(b) of the General Bridge Act (33 U.S.C. 525(b)) is amended by adding at the end thereof the following: "This subsection shall not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.".

(b) Section 9 of the Act of March 3, 1899, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes" (33 U.S.C. 401) is amended by adding at the end thereof the following: "The approval required by this section of the location and plans or any modification of plans of any bridge or causeway shall not apply to any bridge or causeway over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.".

(c) The first section of the Act of March 23, 1906, entitled "An Act to regulate the construction of bridges over navigable waters" (33 U.S.C. 491) is amended by adding at the end thereof the following: "This section shall not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.".

Sec. 10. (a) Section 5 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", enacted August 18, 1894 (33 U.S.C. 499; 28 Stat. 362), is amended—

(1) by inserting "(a)" after "Sec. 5.";

(2) by striking out "or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given," in the second sentence;

(3) by striking out "section" the first and second places it appears and inserting in lieu thereof "subsection";

(4) by striking out "any violation" and inserting in lieu thereof "any willful violation"; and

(5) by adding at the end thereof the following new subsections:

"(b) No vessel owner or operator shall signal a drawbridge to open for any nonstructural vessel appurtenance which is not essential to navigation or which is easily lowered and no person shall unreasonably delay the opening of a draw after the signal required by rules or regulations under this section has been given. The Secretary of Transportation shall issue rules and regulations to implement this subsection.

"(c) Whoever violates any rule or regulation issued under subsection (a) or (b), shall be liable to a civil penalty of not more than $1,000. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.".

(b) The Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", enacted March 3, 1899 (30 Stat. 1153), is amended by striking out "Secretary of War" wherever it appears and inserting in lieu thereof "Secretary of Transportation"; by striking out "recommended by the Chief of Engineers" in section 18 (33 U.S.C. 502) and by adding at the end thereof the following new sections:

"SEC. 21. No owner or operator of any bridge, drawbridge, or causeway shall endanger, unreasonably obstruct, or make hazardous the free navigation of any navigable water of the United States by reason of the failure to keep the bridge, drawbridge, or causeway and any accessory works in proper repair.

"SEC. 22. Whoever violates any provision of this Act, or any order issued under this Act, shall be liable to a civil penalty of not more than $1,000. Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.".

(c) Section 5 of the Act entitled "An Act to regulate the construction of bridges over navigable waters", enacted March 22, 1906 (33 U.S.C. 495; 34 Stat. 85), is amended—

(1) by inserting "(a)" after "Sec. 5.";

(2) by striking out "who shall fail" and inserting in lieu thereof "who shall willfully fail";

(3) by striking out "shall be deemed guilty of a violation of said sections, and any persons who shall be guilty of a violation of said sections,"; and

(4) by adding at the end thereof the following new subsection:

"(b) Whoever violates any provision of this Act, or any order issued under this Act, shall be liable to a civil penalty of not more than $1,000. Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.".

(d) Section 510 of the General Bridge Act of 1946 (60 Stat. 847; 33 U.S.C. 533) is amended—

(1) by inserting "(a)" after "Sec. 510.";

(2) by striking out "who fails" each place it appears and inserting in lieu thereof "who willfully fails", by striking out "who refuses" and inserting in lieu thereof "who willfully refuses", and by striking out "otherwise violates" and inserting in lieu thereof "otherwise willfully violates"; and

(3) by adding at the end thereof the following new subsection:

"(b) Whoever violates any provision of this Act, or any order issued under this Act, shall be liable to a civil penalty of not more than $1,000. Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.".

SEC. 11. The Act entitled "An Act to constitute a Bureau of Navigation in the Treasury Department", enacted July 5, 1884 (23 Stat. 118), is amended by adding at the end of section 8 (as added by section 9 of Public Law 97-136) the following new subsection:

"(d) In any case in which an inspection or examination is delegated under subsection (a) to the American Bureau of Shipping, or similar American classification society, or agent thereof, such Bureau, society, or agent, as the case may be, shall maintain within the United States complete files of all information derived from or necessarily connected with such inspection or examination and shall permit access to such files at all reasonable times to the Coast Guard or any agent designated in writing by the Coast Guard.".

SEC. 12. Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a) is amended by striking out paragraph (11) and inserting in lieu thereof the following:

"(11) PERSONNEL AND MANNING STANDARDS FOR FOREIGN VESSELS.—The Secretary shall—

"(A) periodically evaluate the manning, training, qualification, and watchkeeping standards promulgated by the certificating state of any foreign vessel which operates on or enters the navigable waters of the United States, and transfers oil or hazardous materials in any port or place under the jurisdiction of the United States; and

"(B) determine, after each evaluation made under clause (A), whether the foreign state, whose system for licensing and certification of seafarers was evaluated, has standards which are comparable to or more stringent than United States standards or international standards which are accepted by the United States.".

SEC. 13. Section 4417a(19) of the Revised Statutes of the United States (46 U.S.C. 391a) is repealed.

SEC. 14. (a) Section 34 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1483) is amended by striking out "$1,000" and inserting in lieu thereof "$5,000".

(b) Section 35 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1484) is amended by striking out "$500" and inserting in lieu thereof "$1,000".

SEC. 15. The Commandant of the Coast Guard shall review Coast Guard policies and procedures for towing and salvage of disabled vessels in order to further minimize the possibility of Coast Guard competition or interference with private towing activities or other commercial enterprise. In conducting this review, the Commandant shall consult with the Towing Safety Advisory Committee created by Public Law 96-380, representatives of the commercial fishing and salvage industries, and other interested parties.

SEC. 16. Notwithstanding any other provision of law, the number of full-time civilian employees of the Coast Guard shall be maintained at a level not less than five thousand four hundred and eighty-four throughout fiscal years 1983 and 1984.

TO AMEND THE SOLID WASTE DISPOSAL ACT (H.R. 6307)

WEDNESDAY, MAY 26, 1982

House of Representatives,
Subcommittee on Water Resources,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2167, Rayburn House Office Building, Hon. Robert A. Roe (chairman of the subcommittee) presiding.

Mr. Roe. Good morning, ladies and gentlemen.

The Subcommittee on Water Resources will come to order.

We want to welcome you this morning. This morning the Subcommittee on Water Resources is meeting to receive testimony on two bills, which were sequentially referred to the Committee on Public Works and Transportation. It was necessary to schedule this hearing on very short notice because of the extremely limited time granted to us for consideration of this legislation.

The first of these bills is H.R. 6307, a bill to amend the Solid Waste Disposal Act to authorize appropriations for fiscal years 1983 and 1984, and for other purposes. This bill was referred for a period ending not later than June 4, 1982, for consideration of such provisions of section 4 and section 9 of the reported bill that falls within the jurisdiction of our committee.

Section 4 addresses the subject of hazardous wastes mixed with domestic sewage. Section 104(72) of the Solid Waste Disposal Act provides that the term "solid waste" does not include solid or dissolved material in domestic sewage. Such mixtures are presently regulated under the Federal Water Pollution Control Act.

The amendment would direct the Administrator of the Environmental Protection Agency to submit a report to the Congress with recommendations respecting whether or not such mixture should be regulated under the Solid Waste Disposal Act.

The issues which are involved here are the pretreatment of hazardous waste before discharge into a sewage disposal treatment plant and the pass through of these wastes at the treatment plant into the plant's effluent stream.

Section 9 establishes a National Ground water Commission to investigate and assess a broad range of matters relating to the quantity and quality of ground water resources and mechanisms for the protection of these resources. The Commission is directed to transmit a report to the Congress and to the President containing detailed statements of its findings together with recommendations for appropriate legislation and administrative actions.

The quantity and quality of our Nation's ground water resources are inseparably related to water pollution control and water resources development, both physically and conceptually. This study called for in section 9 must necessarily include consideration of water pollution, water supply, ground water recharge, and the need for surface water storage or transfers to augment ground water supplies.

We have with us today representatives of the U.S. Army Corps of Engineers and the Environmental Protection Agency and the U.S. Geological Survey to discuss these provisions with us.

The second bill we will consider this morning is H.R. 5617, a bill to authorize appropriations for the Coast Guard for fiscal years 1983 and 1984 and for other purposes. This bill was sequentially referred to our committee for a period ending not later than June 1, 1982, for the consideration of such provisions in the reported bill as falls within the jurisdiction of our committee.

These provisions include a number of amendments to statutory authorities related to the approval of plans for the construction of bridges over navigable waters. The alteration, removal, or replacement of bridges which present obstructions to navigation in Federal participation in the cost of such alterations, removal or displacements.

Under the acts which are amended, a permit from the Secretary of Transportation is required for the construction of a bridge over navigable waters of the United States. Bridges which are obstructions to navigation can be ordered to be altered removed or relocated. The Truman-Hobbs Act provides Federal financial assistance in such circumstances. The provisions on H.R. 5617 would remove the application of these laws from waters which are considered navigable for historical purposes and cannot support navigation either in their natural condition or with reasonable improvements.

This bill must be reported by the full committee tomorrow in order to meet the June 1 date. We will therefore mark it up in subcommittee immediately following the hearings, and mark it up in full committee tomorrow.

I want to defer now to my good friend and our ranking minority leader, Hon. John Paul Hammerschmidt from Arkansas.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

As you mentioned earlier, we are running in a very short timeframe here, and in my opening statement, therefore, I am going to do as you did, and mention both bills that we are going to be considering. I am pleased that we are having this review today of H.R. 5617 and H.R. 6307. These bills reported by the Committee on Merchant Marine and Fisheries and the Committee on Energy and Commerce respectively, deal in part with issues under the jurisdiction of the Committee on Public Works and Transportation. Obviously, our intent today is to concentrate on matters related to water issues of concern to the committee.

Many pollution and water resource issues are significantly interwoven. There is often no clear-cut line of demarcation among them.

The surface water-ground water issues are clearly of this kind. As well, the jurisdiction of committees dealing with water issues, such as Merchant Marine and Public Works, often cannot help but overlap. It is appropriate that effective legislation often does touch on more than one jurisdictional area.

H.R. 5617, as originally considered, includes changes to the Truman-Hobbs Act. This act provides for Federal funding for part of the cost of alteration of bridges over navigable waters. There has also been consideration of transfer of this program from the Department of Transportation to the Corps of Engineers or the elimination of the program. The bill further deals with exemption of bridges from the approval requirements of the 1899 Rivers and Harbors Act, where they are not over waters which are navigable in fact.

H.R. 6307, the amendments to the Resource Conservation and Recovery Act, include a provision for a ground water commission to investigate pollution and other ground water issues. The amendments further require investigation of discharge of hazardous materials into publicly owned treatment works.

This provision is directly related to the pretreatment program of the Clean Water Act. Other provisions of the bill relate to small generators, use of material as fuel, and common law remedies which may or may not have a relation to public works issues.

I hope that this hearing will clarify this. I believe our desire this morning is to review the legislation, drafted by the other committees, and to seek comments from our witnesses on issues raised that relate to the two bills. I expect that there is much to commend both of these pieces of legislation. We certainly hold this hearing with absolutely no prejudice regarding the legislation.

Indeed, our review is intended to supplement and complement the work done by the other committees. I believe that what we are able to report from our committee, whether as legislative changes or as report language, will be of help in clarifying the work done to date and in supplementing the record as the legislation moves forward.

Again, Mr. Chairman, I am pleased that we have had this opportunity to consider the Coast Guard authorization bill, H.R. 5617, and the Resource Conservation and Recovery Act amendments, H.R. 6307.

I look forward to hearing from our witnesses.

Mr. ROE. Thank you very much, Mr. Hammerschmidt.

Our first witness today is Ms. Rita M. Lavelle, Assistant Administrator for Solid Waste and Emergency Response of the U.S. Environmental Protection Agency. We want to welcome you to our committee. We have your testimony in full. If you would go ahead and proceed, we would appreciate it.

Ms. Lavelle, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF
RITA M. LAVELLE
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

MAY 26, 1982

Mr. Chairman, I appreciate this opportunity to comment on H.R. 6307, the Resource Conservation and Recovery Act (RCRA) Amendments of 1982, which was reported out of the Committee on Energy and Commerce on May 11, 1982. I would first like to briefly review the progress the Environmental Protection Agency has made and will be making in implementing RCRA.

In the area of hazardous waste regulations required by Subtitle C of RCRA and of major interest to this reauthorization effort EPA has developed a major list of accomplishments. We have regulations which cover and define:

-- listing and identification of hazardous wastes;

-- generator standards, transporter standards, and interim status standards for existing storage, treatment and disposal facilities;

-- financial assurance requirements for closure/post closure costs at hazardous waste storage, treatment and disposal facilities;

-- third Party liability insurance requirements for these same facilities;

-- permitting standards for existing interim status incinerator, storage surface impoundments, and storage and treatment facilities;

-- standards for all of these facilities;

-- procedural standards for issuing permits and authorizing State programs;

-- and, uniform manifest requirements for inter/intra state shipment of hazardous waste.

In addition, we expect to issue land disposal regulations soon for both new and existing facilities, and we are considering regulations to control the blending of hazardous waste with other fuels, as well as the burning of such blended mixtures in boilers.

In short, Mr. Chairman, we are diligently working to ensure the protection of human health and environment from the mismanagement of hazardous waste as outlined by Congress in the RCRA.

The issues covered by the amendments in H.R. 6307 are receiving a great deal of attention within our program office. Basically, as you are aware, Mr. Chairman, there are 12 proposed substantive amendments in this bill. Some of the amendments would clarify and reinforce policy which we have already initiated. However, I must point out that we are already moving to expeditiously achieve these objectives. Therefore, we believe all of these amendments are neither necessary nor appropriate at this time. Today I will discuss the amendments of concern to your committee with which we have problems -- specifically section 4 and section 9 of the bill.

Section 4 of the bill deals with hazardous waste mixed with domestic sewage. It requires EPA to submit a report to Congress within two years of enactment, specifying whether hazardous wastes exempted from Subtitle C control when discharged to a sewer are being effectively controlled under other environmental laws, or whether such wastes should be regulated under RCRA. We feel this requirement will unnecessarily duplicate and overlap work already being done within the Agency. The Office of Water currently is managing a program addressing the problems of hazardous waste mixed with domestic sewage. That program has already developed a large amount of data which would be required by this amendment, and much of this information is already available in a report published by the Office of Water in December, 1981.

Further, in accordance with the requirements of the Clean Water Act, the Agency is moving forward to promulgate amendments which will encourage changes in management of water treatment facilities and programs. Specifically we will be promulgating categorical pretreatment standards for industries which might cause problems with their waste disposal practices. We proposed amendments yesterday to the Clean Water Act which would strengthen our legal authority to control unauthorized discharges to public sewers and improve the legal framework for managing the pretreatment program. We are also currently reviewing sludge management policies to be sure we have a comprehensive and balanced program; and we have initiated a work plan to complete the regulation of sludge under Section 405 of the Clean Water Act.

Thus Mr. Chairman, based on the work that has been done or is underway, we feel it is unnecessary to enact this amendment into law.

The other section of the amendments I would like to address concerns the establishment of a National Groundwater Commission. (Section 9). The Commission would be assigned ten duties including:

- assessing the affect of contamination from solid and hazardous waste on the supply of ground water;
- assessing aid comparing State and Federal authorities activities; and

- assessing the need for a policy to protect ground water from degradation due to hazardous waste contamination.

The Commission would report by October 30, 1986, findings and conclusions and recommend legislation and administrative actions.

The Agency has determined that a groundwater policy is required, and this policy will include a review of major regulatory activities to insure that federal regulations are properly protecting groundwater not only from hazardous waste but in other respects as well. The Federal legal authorities include designation of sole source aquifers, the underground injection control (UIC) program, and various Clean Water Act regulations related to groundwater because of the interaction between groundwater and surface water.

As a part of this developing groundwater policy, we'll be working closely with the States to encourage and assist with State programs, and we'll be undertaking research on the extent of the groundwater contamination and ways of coping with the problem.

Finally, it is our plan to develop this groundwater policy on a much shorter time schedule than is called for by H.R. 6307. Again a case of a good objective but one that is already being effectively addressed. We are concerned that assigning responsibilities for determining a need for a groundwater policy, with a report not due until 1986, will delay EPA's efforts.

Additionally by lack of definition until 1986 the Commission concept would probably discourage State programs and policies. Therefore, we would not support this amendment.

Mr. Chairman, having commented on those provisions of H.R. 6307 being considered by the Subcommittee, I must stress that the changes to RCRA as reported by the House Energy and Commerce Committee were not sought by the Agency. In our proposed bill submitted to the Congress in support of the President's Fiscal Year 1983 Budget, we requested an appropriation authorization totalling $73,765,000 and the repeal of certain financial assistance and related provisions for which the Administration no longer seeks funding. The Agency does not support any changes beyond those requested to date. A copy of our legislative proposal as transmitted to Congress on February 23, 1982, is attached.

I will be happy to answer any questions you may have.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 23 1962

THE ADMINISTRATOR

Honorable Thomas P. O'Neill, Jr.
Speaker of the House
of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is the Environmental Protection Agency's proposed bill "To amend and extend the Solid Waste Disposal Act, as amended, for two years."

The bill would delete several sections of the Solid Waste Disposal Act and extend certain of our appropriation authorizations under the Act through 1984. These authorities expire on September 30, 1982.

Section 2007(b) of the Solid Waste Disposal Act presently requires the Environmental Protection Agency to provide either $5 million or 20% of the general authorization under Subtitle B of the Act, whichever is less, for Resource Recovery and Conservation Panels. These panels are composed of technical specialists that provide advice and assistance to all levels of government in the areas of solid waste management, resource recovery and resource conservation.

States and local governments have developed sufficient program and technical expertise to carry out their solid waste and resource recovery responsibilities without advisory panels provided by the Federal government. In light of the necessary fiscal restraint being applied in all Federal agencies, we believe that the mandatory funding requirement for these panels should be eliminated. Section(1)(b) of the enclosed draft bill, therefore, would delete the requirement for mandatory funding levels for Resource Recovery and Conservation Panels.

Section 2007(d) of the Solid Waste Disposal Act requires the Agency to devote either 25% of the general authorization under Subtitle B or the amount specified in section 4008(a)(1), whichever is less, to support State, local and area agencies consistent with certain provisions of Subtitle D. Subtitle D is intended to encourage solid waste management and planning, with particular emphasis on energy and materials conservation and recovery from solid waste.

Successful assumption of solid waste and resource recovery responsibilities by State and local governments also diminishes the need for financial support from the Federal government. In contrast, hazardous waste management responsibilities are only just beginning to fall on State agencies. Base funding levels, such as Section 2007(d) requires, for grants for essentially self-supporting solid waste programs, detract from the Federal government's ability to support the State's development and initial implementation of new comprehensive hazardous waste control programs. Section 1(b) of the enclosed draft bill would remove the requirement for mandatory funding levels for solid waste financial assistance.

Within Section 4008 of the Solid Waste Disposal Act there are currently two sub-sections which authorize appropriations for Federal grant programs between fiscal years 1981 and 1986 to support State and local agencies for energy and materials conservation recovery planning. Section 4008(a)(3)(A) authorizes $4 million annually for grants to State governments for energy and materials recovery feasibility planning, consistent with the provisions of Section 4003(b). Section 4008(f)(2) authorizes $8 million annually between fiscal years 1981 and 1986 for grants to local or regional agencies for energy and materials conservation and recovery planning activities described in Section 4008(b)(1)(A) and (B). These two grant programs would encourage State and local efforts to maximize recovery and reuse of energy and materials contained in solid waste.

No appropriations under either of these sections were provided in fiscal year 1982 and the President does not intend to seek appropriations for fiscal year 1983. Deletion of these subsections authorizing appropriation limits would ease the budget reconciliation process.

Section 4008(f)(4) of the Solid Waste Disposal Act authorizes $5 million in appropriations for both fiscal years 1982 and 1983 to support State recycled oil programs. Grants would be made to States which include provisions encouraging use of recycled oil within their State Solid Waste Management Plans developed in accordance with Section 4003. Due to priority on seeking resources for the Subtitle C hazardous waste program, appropriations were not requested for either fiscal year 1982 or 1983 to carry out Section 4008(f)(4). Reauthorization does not appear to be necessary, and the discrepancy between yearly authorizations and actual appropriations complicates budget reconciliations.

Accordingly, section 3 of the enclosed draft bill would delete these provisions of section 4008 of the Act.

Section 8002 of the Solid Waste Disposal Act contains two subsections authorizing appropriations for selected special studies. Section 8002(j)(5) authorizes up to $2 million to support the activities of the Resource Conservation Committee. The Resource Conservation Committee's investigation and study were reported to Congress in July 1979. Thus, there is no future need for appropriations specific to section 8002(j) activities. Section 8002(m)(3) authorizes appropriations, in addition to section 2007-General Appropriations, to conduct a study on drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal energy. To the extent EPA is conducting this study mandated by Congress in 8002(m), the resources are designated by the Agency within the operating plan developed for the general appropriation. This authorization for $1 million is not necessary for carrying out the study provisions of Section 8002(m). Since the Administration has not and will not seek appropriations under this specific provision but, rather, will continue to rely on Section 2007 General Appropriations for all RCRA activities outside of financial assistance programs, these sections can be deleted with no adverse impact. This deletion, too, will aid in budget reconciliation efforts.

Section 4 of the enclosed draft bill, therefore, would delete these provisions of section 8002 of the Act.

Enactment of the remaining provisions of the enclosed bill would enable the Environmental Protection Agency to continue the non-research programs envisioned by the Solid Waste Disposal Act, as amended. We have requested extension of related research and development appropriation authorities in another draft bill, "The Environmental Research, Development and Demonstration Authorization Act of 1983." The enclosed draft bill provides appropriation authorization for our nonresearch activities under sections 2007(a) and 3011(a) of the Act.

These activities include: development and promulgation of hazardous waste regulations, operation of hazardous waste programs in States prior to State assumption of the program, financial assistance to States to support State implementation, and funds for basic operating expenses and salaries. The major emphasis of the program will be upon State assumption and implementation of the hazardous waste program, including facility site permitting. An initiative to undertake criminal investigations of hazardous waste violations is also included.

We recommend that this proposal be referred to the appropriate Committee and that it be enacted.

Our request for appropriation authorizations in the enclosed draft bill for fiscal year 1983 for these non-research activities under the Solid Waste Disposal Act totals $73,765,000. This is the amount requested in the President's 1983 Budget for these activities.

The Office of Management and Budget advises that enactment of this legislative proposal would be in accord with the program of the President.

Sincerely yours,

Anne M. Gorsuch
Administrator

Enclosure

A BILL

To amend and extend the Solid Waste Disposal Act, as amended, for two years

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1.(a) Section 2007(a) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6916), is amended by striking "and" immediately following "1981," and by inserting immediately before the period at the end thereof ", $38,628,000 for the fiscal year ending September 30, 1983, and such sums as may be necessary for the fiscal year ending September 30, 1984".

(b) Sections 2007(b) and 2007(d) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6916), are hereby repealed and section 2007(c) is redesignated as section 2007(b).

Sec. 2. Section 3011(a) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6931), is amended by striking "and" immediately following "1981," and by inserting immediately following "1982" the following: ", $35,137,000 for the fiscal year 1983, and such sums as may be necessary for the fiscal year 1984".

Sec. 3.(a) Section 4008(a)(3)(A) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6948), is hereby repealed and sections 4008(a)(3)(B) and 4008(a)(3)(C) are redesignated as sections 4008(a)(3)(A) and 4008(a)(3)(B) respectively;

(b) Section 4008(f)(2) of the Solid Waste Disposal Act, as amended (42 U.S.C 6948(f)^4), is hereby repealed and section 4008(f)(3) is redesignated as section 4008(f)(2); and

(c) Section 4008(f)(4) of the Solid Waste Disposal Act, as amended (42 U.S.C 6948(f)^3), is hereby repealed.

Sec. 4 (a) Section 8002(j)(5) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6982), is hereby repealed; and

(b) Section 8002(m)(3) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6982), is hereby repealed.

Mr. **Roe**. Please proceed.

TESTIMONY OF RITA M. LAVELLE, ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY MICHAEL COOK, ACTING DIRECTOR OF SOLID WASTE; PETER PEREZ, SPECIAL ASSISTANT FOR POLICY TO THE ASSISTANT ADMINISTRATOR FOR WATER; AND THOMAS O'FARRELL, ENGINEER, OFFICE OF WATER REGULATION AND STANDARDS

Ms. **Lavelle**. I would like to introduce to my far left Mr. Thomas O'Farrell, our chief of special treatment for the water program task force; Mr. Mike Cook, who is the Acting Director of the Office of Solid Waste, or RCRA, as we refer to it; and on my right, Mr. Peter Perez, the Assistant for Policy to the Assistant Administrator for Water.

Mr. **Roe**. Thank you.

Ms. **Lavelle**. Thank you, Mr. Chairman, for this opportunity to comment on H.R. 6307, the Resource Conservation and Recovery Act [RCRA] Amendments of 1982, which was reported out of the Committee on Energy and Commerce on May 11, 1982. I would first like to briefly review the progress the Environmental Protection Agency has made and will be making in implementing RCRA.

In the area of hazardous waste regulations required by subtitle C of RCRA and of major interest to this reauthorization effort, EPA has developed a major list of accomplishments. We have regulations which cover and define:

Listing and identification of hazardous wastes;

Generator standards, transporter standards, and interim status standards for existing storage, treatment and disposal facilities;

Financial assurance requirements for closure/post closure costs at hazardous waste storage, treatment and disposal facilities;

Third-party liability insurance requirements for these same facilities;

Permitting standards for existing interim status incinerator, storage surface impoundments, and storage and treatment facilities;

Standards for all of these facilities;

Procedural standards for issuing permits and authorizing State programs; and

Uniform manifest requirements for inter-intra State shipment of hazardous waste.

In addition, we expect to issue land disposal regulations soon for both new and existing facilities, and we are considering regulations to control the blending of hazardous waste with other fuels, as well as the burning of such blended mixtures in boilers.

In short, Mr. Chairman, we are diligently working to insure the protection of human health and environment from the mismanagement of hazardous waste as outlined by Congress in the RCRA.

The issues covered by the amendments in H.R. 6307 are receiving a great deal of attention within our program office. Basically, as you are aware, Mr. Chairman, there are 12 proposed substantive amendments in this bill. Some of the amendments would clarify and reinforce policy which we have already initiated.

Some need clarification to meet their objectives and some are neither necessary nor appropriate. However, Mr. Chairman, I must point out that we at EPA are already moving to expeditiously achieve these objectives.

Today I will discuss the amendments with which we have problems, specifically section 4 and section 9 of the bill.

Section 4 of the bill deals with hazardous waste mixed with domestic sewage. It requires EPA to submit a report to Congress within 2 years of enactment, specifying whether hazardous wastes exempted from subtitle C control when discharged to a sewer are being effectively controlled under other environmental laws, or whether such wastes should be regulated under RCRA.

We feel this requirement will unnecessarily duplicate and overlap work already being done within the agency. The Office of Water currently is managing a program addressing the problems of hazardous waste mixed with domestic sewage. That program has already developed a large amount of data which would be required by this amendment, and much of this information is already available in a report published by the Office of Water in December 1981.

Further, in accordance with the requirements of the Clean Water Act, the agency is moving forward to promulgate amendments which will encourage changes in management of water treatment facilities and programs. Specifically we will be promulgating categorical pretreatment standards for industries which might cause problems with their waste disposal practices.

We proposed amendments last evening to the Clean Water Act which would strengthen our legal authority to control unauthorized discharges to public sewers and improve the legal framework for managing the pretreatment program. We are also currently reviewing sludge management policies to be sure we have a comprehensive and balanced program; and we have initiated a work plan to complete the regulation of sludge under section 405 of the Clean Water Act.

Thus, Mr. Chairman, based on the work that has been done or is underway, we feel it is unnecessary to enact this amendment into law.

The other section of the amendments I would like to address concerns the establishment of a National Groundwater Commission. (Section 9.) The Commission would be assigned 10 duties including:

Assessing the effect of contamination from solid and hazardous waste on the supply of ground water;

Assessing aid comparing State and Federal authorities activities; and

Assessing the need for a policy to protect ground water from degradation due to hazardous waste contamination.

The Commission would report by October 30, 1986, findings and conclusions and recommend legislation and administrative actions.

The Agency has determined that a groundwater policy is required, and this policy will include a review of major regulatory activities to insure that Federal regulations are properly protecting ground water not only from hazardous waste but in all other respects as well.

The Federal legal authorities include designation of sole source aquifers, the underground injection control [UIC] program, and various Clean Water Act regulations related to ground water because of the interaction between ground water and surface water.

As a part of this developing ground water policy, we'll be working closely with the States to encourage and assist with State programs. Additionally, we will be undertaking research on the extent of the ground water contamination and ways of coping with the problem.

Finally, it is our plan to develop this ground water policy on a much shorter time schedule than is called for by H.R. 6307. Again, a case of a good objective but one that is already being effectively addressed. We are concerned that assigning responsibilities for determining a need for a ground water policy, with a report not due until 1986, will delay EPA's efforts.

Additionally by lack of definition until 1986 the Commission concept would probably discourage State programs and policies. Therefore, we would not support this amendment.

Mr. Chairman, having commented on those provisions of H.R. 6307 being considered by the subcommittee, I must stress that the changes to RCRA as reported by the House Energy and Commerce Committee were not sought by the Agency. In our proposed bill submitted to the Congress in support of the President's fiscal year 1983 budget, we requested an appropriation authorization totaling $73,765,000 and the repeal of certain financial assistance and related provisions for which the administration no longer seeks funding. The Agency does not support any changes beyond those requested to date. A copy of our legislative proposal as transmitted to Congress on February 23, 1982, is attached.

I will be happy to answer any questions you may have.

Mr. **Roe**. Thank you, Ms. Lavelle, for your testimony.

The Chair would defer to the distinguished gentleman from Pennsylvania, Mr. Edgar, for his observations.

Mr. **Edgar**. Thank you, Mr. Chairman.

I have a statement and then I would like to ask a couple of questions dealing with section 9. I will read my statement first. The statement goes to the points that you were making about the National Groundwater Commission.

Mr. Chairman, it is my understanding that one of the items on the agenda for today's hearing deals with section 9 of H.R. 6307. Section 9 is the section of the RCRA reauthorization which creates a new National Groundwater Commission.

Since the Groundwater Commission idea is one in which I have been heavily involved and since I helped to author the original legislation which is now contained in the bill before us, I would like to be able to make a statement explaining some of the reasons why the creation of this Commission is necessary.

A great deal of evidence has surfaced showing that the contamination of our Nation's ground water supplies is increasing at a dangerous pace. When you consider the fact that over one-half of all Americans depend on ground water for drinking water, you can begin to realize the magnitude of this problem.

According to a survey published last year by the New York Public Interest Research Group, a sampling of 450 wells in Nassau County found traces of suspected carcinogens in 25 percent of the tested wells. Public water supplies have been found to be contaminated in 20 Massachusetts communities, 16 communities in Connecticut, 25 in Pennsylvania, and 22 in New York. About 100 drinking water wells surrounding a landfill in Jackson Township, N.J., have been closed because of organic contamination. Thirty square miles of the shallow aquifer under the Rocky Mountain Arsenal in Denver have been contaminated by chemical byproducts from the manufacture of pesticides and herbicides.

A May 6, 1982, survey by the General Accounting Office points out as a major national issue impending water shortages in the West and Southwest caused by continual shifting of population to urban centers in the western region which are dependent on underground aquifers for water supply.

Congress has addressed ground water problems in the past—notably in the area of hazardous waste control. The Resource Conservation and Recovery Act—which we are dealing with in H.R. 6307—the Safe Drinking Water Act, and the Superfund Act all address issues concerning ground water contamination and related health hazards. The Northeast-Midwest Congressional Coalition, which I chair, held an informal field hearing on this subject last fall at Greenvale, Long Island. At that hearing 11 witnesses told Senator Pat Moynihan and Representatives Lent, Ferraro, and Carman of the need for a more concerted Federal and State attack on ground water contamination.

The idea for a ground water commission grew out of that hearing on Long Island and a subsequent conference on water issues in January. At the Northeast-Midwest Coalition Conference in January, which was attended by our distinguished subcommittee chairman, Prof. David Morrell of Princeton University, strongly advocated the need for a high-level commission to focus on ground water problems. Subsequently, Dr. Morrell wrote to me:

> While local areas already face serious dangers, at the national level we still have sufficient time (perhaps two or three years) to formulate responsible and effective public policy. Moreover, this is an area of public policy which, while national in scope, requires a great deal of action on the State and local level. In addition, ground water policy remains highly ambiguous. Essentially, no one knows what we should be doing: not the government regulatory officials at EPA or in the States; not the academic exports; not the business executives; not the environmental community; and not the politicians. Frankly, all of us are still floundering in a morass of unclear scientific information, political and economic pressures, and regulatory confusion.

These are the words of an environmental engineer and one of America's top experts in this field. While much work and research is being conducted on ground water currently, there is no overall focus for these efforts. The bureaucracy at EPA has not helped substantially. Congressional committees have tried to find answers, but congressional jurisdiction is scattered and chaotic on this issue.

Dr. Morrell went on to suggest to me that what we need is a congressionally charged commission, with specific duties, and an obligation to report to Congress by a date certain where we stand on the national ground water problem. This is the only practical way to get a handle on the ground water issue before it becomes a national crisis.

The commission, as formulated in H.R. 6307, would contain eight congressional members, representatives of State and local government, academics, business and environmental interests, and the

Congressional Office of Technology Assessment. It is charged with 10 very specific and difficult tasks, including: assessment of current State and Federal law and regulation, assessment of scientific research; assessment of economic factors and consequences of ground water issues; and examination of institutional and legal conditions surrounding ground water issues.

The Commission is intended to study these issues, without prior conclusion as to policy choices or legislation needed. This is not an effort to create another chapter of Federal regulation, but rather as an effort to provide information on which policymakers can make choices on a critical issue.

I have worked with several other members in developing this idea, and I have spoken about it with Chairman Roe and other members of this committee. I believe that the ground water commission's time has come, and that it is an issue that we can no longer ignore.

Thank you, Mr. Chairman.

Mr. **Roe**. Thank you, Mr. Edgar.

The distinguished gentleman from Arkansas.

Mr. **Hammerschmidt**. Thank you, Mr. Chairman.

Ms. Lavelle, I wonder if you would expand on the statement where you say "We proposed amendments yesterday to Clean Water Act which would strengthen our legal authority to control unauthorized discharges to public sewers and improve the legal framework for managing the pretreatment program."

Ms. **Lavelle**. I would be glad to. Mr. Perez is our specialist in this area. Perhaps he could address it.

Mr. **Hammerschmidt**. Would you please enlighten us on what you have done in that area.

Mr. **Perez**. Yesterday we introduced legislative proposals to both committees in Congress. I believe you have copies of those proposals. Specifically with the introduction of pollutants into sewer systems—those pollutants might include hazardous wastes—our proposal would continue what we call the pretreatment program, which has been in the Clean Water Act since 1972. That program has been modified by the Congress over the years. It has been improved. It is in effect. These amendments would further streamline and perfect it.

I would call your attention to one specific amendment, which would equalize the enforcement penalties between the Resource Conservation and Recovery Act and the Clean Water Act. We would eliminate any economic incentive for the introduction of pollutants into sewer systems, but the basic standards, controlling the introduction of pollutants into sewer systems, would remain in effect in our legislative proposal.

Mr. **Hammerschmidt**. Regarding the National Commission on Groundwater that would be established under H.R. 6307, and that was discussed at length by our colleague from Pennsylvania, we know that EPA has been reviewing various ground water strategies. Could you provide information to the committee on whether the bulk of the ground water problems are due to solid waste disposal or related as well to surface water contamination, saline intrusion, and other matters?

Ms. **Lavelle**. We will be glad to do that.

Mr. **Hammerschmidt**. Section 4 of H.R. 6307 requires a study of hazardous waste placed in publicly owned treatment works. Shouldn't this matter be primarily a Clean Water Act issue?

Mr. **O'Farrell**. I think that is our position, that we feel that within the Clean Water Act, we are sufficiently covering those materials that are discharged into publicly owned treatment works.

Mr. **Hammerschmidt**. We can't hear you.

Mr. **O'Farrell**. I think our position is that within the Clean Water Act in the pretreatment sections we are adequately covering the discharge of pollutants that are discharged into publicly owned treatment works.

Mr. **Hammerschmidt**. The committee is obviously concentrating on sections 4 and 9 of H.R. 6307 over which the committee has obvious jurisdiction. In your opinion are there other provisions of the legislation which may have implications for Clean Water Act activities under the purview of the Public Works Committee?

Ms. **Lavelle**. Mr. Chairman, perhaps the amendments that referred to underground injection wells, we refer to section 5(b). Are you familair with this part of the amendment? Six months after enactment of the amendment, it would basically prohibit disposal of hazardous wastes by injection through class 4 wells.

Mr. **Hammerschmidt**. Because we have a vote on, I will send to you additional questions, and I would like for you to respond for the record.

Ms. **Lavelle**. Yes, sir.

[The information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 7 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable John Paul Hammerschmidt
House of Representatives
Washington, D.C. 20515

Dear Mr. Hammerschmidt:

You asked in your letter of May 28, 1982, that I answer several questions for the record. The questions resulted from the hearing held on May 26, 1982, by the Subcommittee on Water Resources of the Committee on Public Works and Transportation to discuss H.R. 6307.

The answers to the questions are enclosed. Please let me know if I can be of any additional assistance.

Sincerely yours,
Michael B Cook
for Rita M. Lavelle
Assistant Administrator

1. The Committee is obviously concentrating on Section 4 and 9 of H.R. 6307 over which the committee has obvious jurisdiction. In your opinion, are there other provisions of the legislation which may have implications for Clean Water Act activities under the purview of the Public Works Committee. Please comment on these provisions and provide an assessment of the need for them.

ANSWER: The sections of H.R. 6307 other than sections 4 and 9 do not have implications for other Clean Water Act activities. Although section 402 of the Clean Water Act applies to underground injection wells which are dealt with in section 5 of H.R. 6307, the Agency regulates underground injection under the Safe Drinking Water Act and RCRA.

IT HAS BEEN BROUGHT TO THE COMMITTEE'S ATTENTION THAT IN SOME CASES SUBSTANCES WITHIN INDUSTRIES ARE MIXED WITH AND BURNED WITH FUEL AS PART OF THEIR PLANT RECYCLING PROGRAM. WHERE SUCH BURNING PROVIDES BENEFITS TO THE COMPANY AND DOES NOT RESULT IN TRANSFERRING POLLUTION PROBLEMS TO ANOTHER MEDIUM, DO YOU BELIEVE IT IS NECESSARY FOR THE FEDERAL GOVERNMENT TO REGULATE SUCH INTERNAL PLANT PROCEDURES, ESPECIALLY IF THE ALTERNATIVE MAY BE INCREASED WATER POLLUTION PROBLEMS?

ANSWER

Burning of process residues in a boiler, either with or without blending with fossel fuels, has the same potential for emitting hazardous substances to the air as does burning in an incinerator. In either case, if the hazardous components are not adequately destroyed or removed in the burning device and its air emission control equipment, they will be emitted to the air. Because of this, the Agency is now studing the practice of burning hazardous waste as a fuel.

It is possible, perhaps likely, that the study will show that some wastes are adequately destroyed at the boiler conditions normally maintained in order to produce steam. In such cases, there is little or no potential harm to human health from current practices, and thus there would be no need for Federal regulations. The intent of EPA is to determine which practices (i.e., wastes or waste blends, boiler types, or operating conditions) present a problem and require regulatory control, and which do not.

H. R. 6307 WOULD SUBSTITUTE THE TERM "SUBSTANCES" FOR "HAZARDOUS WASTES" IN SOME CASES. THIS IS INTENDED APPARENTLY TO INSURE THAT THERE IS CONTROL OVER THE BURNING OF HAZARDOUS WASTES MIXED WITH FUEL. DOES THE AGENCY AGREE THAT THIS PROBLEM OF BURNING HAZARDOUS WASTES, SUCH AS PCB'S, NEEDS APPROPRIATE CONTROL? DO YOU BELIEVE THAT SUCH OBJECTIVE COULD BE ACHIEVED BY USING THE TERM "HAZARDOUS WASTES" INSTEAD OF "SUBSTANCES" AS IT IS USED IN SECTION 6?

ANSWER

As explained under number 2 above, the Agency believes that burning of some hazardous wastes in certain boilers may need regulatory control. We believe that this objective can be achieved by using the term "hazardous wastes", since the materials listed or identified in our current (or future) regulations as hazardous wastes constitute the universe of principal concern. The use of the term substance would potentially bring in various commercial fuels which should not be subject to RCRA jurisdiction.

THE SMALL GENERATOR EXEMPTION PROVISION HAS BEEN REDUCED FROM 1,000 KILOGRAMS/MO. TO 100 KILOGRAMS/MO. IN H.R. 6307. WHAT WILL BE THE REDUCTION IN THE AMOUNT OF HAZARDOUS WASTES GOING INTO MUNICIPAL LANDFILLS BY THIS CHANGE? DO YOU HAVE AN ESTIMATE OF THE NUMBER OF ADDITIONAL COMMERCIAL ACTIVITIES WHICH WOULD HAVE TO BE CONTROLLED AND WHAT THE COST FOR THIS CONTROL MIGHT BE?

ANSWER

Currently, about 600,000 metric tons of hazardous waste per year falls within the 1,000 kilogram per month exemption. This represents about one percent of the total hazardous waste generated in the United States based on estimates in EPA's 1979 small quantity generator study. Current estimates indicate that 40 million tons of hazardous waste are generated per year so that the small quantity generator exemption may really represent about 1.5 percent of the total hazardous waste generated in the United States. If the exemption is reduced to 100 kilograms per month, then 100,000 metric tons of hazardous waste per year would fit within the exemption. We do not have any data on what percentage of this exempted waste actually goes to State-approved municipal landfills because the generator can also treat or dispose of the waste on-site, send it to a hazardous waste facility, or send it to a facility which re-uses, recycles, or reclaims the waste.

If the exemption is lowered to 100 kilograms per month, we estimate that an additional 132,000 generators (compared with roughly 60,000 now covered) will be regulated and this will cost the regulated community an additonal $150 million annually. Approximately 75 percent of these generators are service oriented rather than in the manufacturing sector. For example, included are gasoline service stations, auto repair garages and body shops, dry cleaners, hospitals, and local transit authorities.

Question #5

SECTION 8 OF THE AMENDMENTS REQUIRES EPA TO ISSUE SITE PERMITS TO ALL HAZARDOUS WASTE FACILITIES WITHIN 6 YEARS OF ENACTMENT OF THE BILL, BUT EXEMPTS STATES WHO HAVE BEEN DELEGATED THE WASTE MANAGEMENT PROGRAM. HOW WILL THIS EXEMPTION IMPACT THE OVERALL COMPLIANCE DEADLINE?

Answer

By the end of FY-84 EPA expects to authorize approximately 45 States to administer State hazardous waste programs in lieu of the Federal programs. In such States, RCRA permits will be issued by State agencies rather than by EPA. EPA will only issue RCRA permits in the remaining 10 States and territories and this will only represent a very small percentage of the total number of permits since most of the the more industrialized States containing most of the facilities are expected to receive authorization. Therefore the net effect of the amendment would be to establish 6 year permitting deadlines for less than approximately 5 percent of the facilities nationwide.

Question #6

SECTION 7 OF THE AMENDMENTS ALLOWS ONLY 10% EXPANSION OF A HAZARDOUS WASTE SITE PRIOR TO RECEIVING A FINAL EPA PERMIT. AREN'T THERE SOME CIRCUMSTANCES WHERE OTHER FEDERAL, STATE, AND LOCAL LAWS WOULD REQUIRE EXPANSION BEYOND 10% WHILE A SITE IS STILL IN INTERIM STATUS?

Answer

Yes. For example a State law may prohibit the disposal of a particular waste in a landfill and it may be necessary for a facility owner to install a new process to treat, store or dispose of a waste on very short notice. The timing of the State law may be such that it would be impossible for the operator to apply for and receive a permit before the change had to be made.

Another example would be where changes to a facility were needed in order to receive a State or Federal RCRA permit. Improvements to a facility may be necessary prior to obtaining a RCRA permit and these improvements may involve adding processes that were not there originally or expanding the capacity of existing processes.

Therefore, EPA supports allowing expansions of facilities beyond 10 percent if such expansions are necessary to comply with Federal regulations or State or local laws. These expansions should be allowed when the Federal regulation or State or local law forces a change so quickly that it would be untimely or impossible to obtain a RCRA permit or when the change is obviously necessary to receive a RCRA permit.

Mr. Roe. We will call a 10-minute recess while we go and vote. We will be right back.

[Recess.]

Mr. Roe. The hearing will reconvene.

When we recessed, Mr. Hammerschmidt had the floor and he was stating that he will send you some additional questions in writing, but there are a couple of other questions he wants to ask now. Mr. Hammershmidt.

Mr. Hammerschmidt. Thank you.

Mr. Perez, in your response of a moment ago, what did you mean when you said the Clean Water Act proposals you submitted yesterday "will eliminate an incentive that exists to dump hazardous wastes into sewers"?

Mr. Perez. Mr. Hammerschmidt, the Clean Water Act lacks a felony or criminal penalty for the introduction of pollutants into treatment works which might cause harm to public health, damage to the works, or other such problems. The Research Conservation and Recovery Act has criminal penalties for the introduction—I am sorry—the disposal of hazardous pollutants. Without such a provision there could be an incentive for midnight dumping into the sewer systems, because disposal of those same wastes within the authority of the Research Conservation Recovery Act could be subject to stiff penalties. So under our proposed amendments, the penalties would be equalized.

Mr. Hammerschmidt. So you are suggesting that those who have the legislative authority over the Clean Water Act take action in this area?

Mr. Perez. Yes, Mr. Hammerschmidt.

Mr. Hammerschmidt. Regarding the discharge of hazardous wastes into publicly owned treatment works, your testimony, Ms. Lavelle, mentions new sludge management policies. What is the status of the sludge management policy development, and when do you expect it to be finalized?

Ms. Lavelle. Again, I will have Mr. Perez answer that specifically.

Mr. Hammerschmidt. Mr. Perez, would you please respond.

Mr. Perez. Mr. Hammerschmidt, we are working to have proposed regulations fulfilling section 405 of the Clean Water Act which provides for the regulation of sludge use disposal in the latter part of this year or very early next year.

Mr. Hammerschmidt. Thank you very much. I do have further questions, but I will submit them to you for your response in writing for the record.

Thank you, Mr. Chairman.

Mr. Roe. The gentleman from Pennsylvania.

Mr. Edgar. Thank you, Mr. Chairman.

I appreciate your patience as I read through the statement on the Groundwater Commission. As you can see, I have spent a lot of time on that particular issue.

Mr. Chairman, I would like to ask unanimous consent to include in the record a letter from Dr. David Morrell outlining the issue in a little greater detail.

Mr. Roe. There is no objection. It is so ordered.

[The letter referred to follows:]

Princeton University SCHOOL OF ENGINEERING/APPLIED SCIENCE
CENTER FOR ENERGY AND ENVIRONMENTAL STUDIES
THE ENGINEERING QUADRANGLE
PRINCETON, NEW JERSEY 08544

Feburary 15, 1982

Mr. Ken Doyle
Aide to Congressman Robert Edgar
U.S. House of Representatives
Washington D.C. 20545

Dear Mr. Doyle:

I wanted to follow up on our earlier telephone conversation, and on the discussion that I had with Representative Edgar last month during the session on "Water: Resource Issue of the 1980s". In essence, the purpose of this letter is to reiterate my proposal for the formation of a National Commission on Groundwater Protection, basically along the lines of the National Air Quality Commission NCAQ) which concluded its work in March 1981 with issuance of the report "To Breathe Clean Air".

In my opinion, a groundwater commission could make an extremely important contribution to the evolution of public policy in this controversial and complicated area. Normally, by the way, I am not at all optimistic about the prospects for commissions to produce useful results -- they typically act to reassert a set of policy conclusions already formulated by their sponsors.

In this case, however, the commission format might be the very best one available: as long as the commission is created under the aegis of the Congress rather than the President. We have a national groundwater problem, but not yet a national crisis. While local areas already face serious dangers, at the national level we still have sufficient time (two or three years, perhaps) to formulate responsible and effective public policies. If we are not prepared to act aggressively by then, however, the crisis could grow rapidly to unmanageable proportions. Moreover, this is an arena of public policy which, while national in scope, requires a great deal of action on the part of state and local governments — representation from these units of government on a national commission could provide an important forum for development of policies in this era of "new federalism". In addition, groundwater policy remains highly ambiguous. Essentially, no one knows what we should be doing: not the government regulatory officials at EPA or the states; not the academic experts; not the business executives; not the environmental community; and not the politicians. Frankly, all of us are still foundering in a morass of unclear scientific information, political and economic pressures, and regulatory confusion.

A Congressionally-sponsored bipartisan National Groundwater Commission could be charged with the responsibility (and given sufficient staff, time, and research grant resources) to study this issue in the depth it deserves, formulate public policies which make sense, communicate about this topic with the public, and develop the necessary national consensus so that these policies can be translated into effective action at national, state, and local levels. The commission could be requested to report to Congress and to the public by 1984 or 1985 (coterminous with a new administration) with specific recommendations on the need for a new title on groundwater protection in the Clean Water Act, or in the Safe Drinking Water Act...or for a separate national groundwater statute.

I have enclosed a copy of the NCAQ membership list. Its thirteen members included four members of Congress (two Senators and two Representatives), and nine others from state and local governments, the environmental community, universities, industry and labor. A wide variety of political persuasions on controversial air quality issues were represented on this group. This is the kind of balanced representation which I would see as essential for a National Groundwater Commission. In the present political climate, of course, the operative principle of this commission, as opposed to a similar Presidential body, is to retain overall sponsorship in the hands of the Congress rather than the executive branch. The NCAQ's final report lists a staff of 38 professionals under an Executive Director, plus 19 support personnel. I suspect that a serious approach to the groundwater issue would require a staff roughly similar in size to NCAQ's. As stated in the preface to "To Breathe Clean Air", "Congress established the National Commission on Air Quality under the Clean Air Act Amendments of 1977 to make an independent analysis of air pollution control and alternative strategies for achieving the goals of the Act. The 13-member commission was charged with compiling and assessing information on environmental, technological, scientific, and social issues relating to air quality policy." The 30-month NCAQ effort required approximately $ 8.9 million of authorized funds, including $ 5.2 million for contracted research studies. A similar charter and structure for the National Groundwater Commission would seem appropriate.

I look forward to further communication with you and with Bob Edgar on this suggestion.

Sincerely yours,

David Morell

David Morell

Mr. Edgar. As I stated in my opening statement, there seems to me to be two issues, and as I reflected on your statement, I was, frankly, very pleased with your lack of strong opposition to the issue of groundwater protection. You had a little frustration over the date and you had a little concern over jurisdiction, but I think there are two issues that I would like to bring to your attention and to the attention of the committee.

The first is that there is a short-term and a long-term need in the whole area of ground water protection, and nothing in the legislation that I can find—and perhaps you would want to comment on this—forestalls the EPA from getting involved in exactly the program that you have outlined on page 5 of your testimony, of assessing the need of recognizing that a strong ground water policy is required in going ahead with a short-term ground water policy, and nothing in the statement forecloses that, or in the legislation.

There is also a long-term need, based on all of the shopping list of problems some of which I mentioned, and others.

I would also point out that in the short term and in the long term, the Commission's responsibilities would be to assist EPA and other agencies who are concerned with it. So the first point that I think is important to try to make—and I would appreciate your comment—is the need for a responsible policy toward a short- and long-term ground water policy.

The second issue which I think I ought to deal with before I listen to your response, is that the issue of ground water protection is a larger issue than just EPA. I have in front of me a document that was provided by the General Accounting Office dated May 6, 1982. It lists—and it is appendix 2—congressional committees with water-related responsibilities.

In the Senate it lists under the Committee on Appropriations the Subcommittee on Energy and Water Development, the Subcommittee on Interior, the Subcommittee on Transportation. In the Senate it lists the Committee on Budget. It also lists the Committee on Energy and Natural Resources, the Subcommittee on Public Lands and Reserve Water, the Subcommittee on Water and Power. It includes the Committee on Environment, Public Works, the Subcommittee on Transportation, the Subcommittee on Water Resources.

Then when you turn to the House of Representatives, while many of us on this particular subcommittee feel that water ought to be the primary role and responsibility of our jurisdiction, we have the Committee on the Appropriations, we have the Committee on the Budget, we have the Committee on Energy and Commerce, we have the Committee on Government Operations, Committee on Interior and Insular Affairs, Committee on Merchant Marine and Fisheries, Committee on Public Works and Transportation, the Committee on Science and Technology, all of which have jurisdiction.

When you turn to the agencies in the Federal Government that have concern about ground water, the list of agencies involved goes far beyond EPA. They include the Agriculture Department, they include the Transportation Department, they include the Commerce Department, because whole communities are being placed on top of closed aquifers. Almost every agency of the Federal Government, including, I might add, the Defense Department.

We had one scenario where the Defense Department was going to build 4,600 holes in the ground in the arid Southwest, and service 200 MX missiles that they were going to place in those 4,600 holes. The development of whole scale communities in those regions without adequate long-term water supplies are a national security concern of the Nation.

I would add a third area, and that is the outside agencies and communities that have some concern about this whole issue of ground water and ground water protection. I met this week over lunch with the National Research Council and the National Academy of Sciences and some of their top scientific professionals, and they are very eager to participate in a national ground water assessment, not just dealing with hazardous wastes but of all of the other issues, and the value of the Commission would give us the opportunity to have jurisdiction over a larger agenda, and include a larger number of nationally known experts in helping to develop the long-term national agenda on ground water protection.

So, in these two areas, the short- and long-term need, which I don't think interfere with what you are doing, and the larger issue of ground water protection on into the year 2000, many of us believe in a bipartisan way that a National Groundwater Commission, working closely with you, and closely with the National Academy of Science, and closely with the National Research Council, and closely with all the agencies and committees and subcommittees of Congress, could be a viable way of educating and teaching all of us the need for ground water protection.

Do you have any reaction to that?

Ms. **Lavelle**. Yes. I appreciate your remarks. As the Assistant Administrator at EPA in charge of Superfund, I am very cognizant of some of the problems that you have outlined, because basically there it is a ground water problem that we are facing as we approach our remedial actions at each of the specific sites. And in fact, many of the instances you have cited are Superfund sites, and on the list for action, where we are currently engaged in action.

I guess, Mr. Edgar, it comes down to that we both perceive the problem. The difference lies in how we approach the solution to the problem. You have suggested a commission and we would suggest that the approach we are currently using within the agency would address the problem. We have conscientiously approached other Federal agencies. While I am really not strong on whether we have outside agencies on that interagency group or not, I certainly would bring back that recommendation. We would hope that we could move in a very expeditious, timely manner to make recommendations, and that is our plan.

Mr. **Edgar**. I appreciate the fact that you are not close to the full goal of providing a national policy, and I would hope that you would talk with some of the people who are experts in the field outside of Government, and recognize that there is a larger group that is interested.

Let me turn to another subject with just two questions. Is it not a fact that under the present domestic sewage exemption under the Resource Recovery Act, that any generator can dispose of virtually any waste into any sewer as long as that sewer is connected to a publicly owned treatment works?

Ms. Lavelle. Mr. Cook will answer that.

Mr. Cook. Under the Resource Conservation Recovery Act, generators of less than 1,000 kilograms of waste per month can dispose of wastes into the sewer systems and not be covered under the RCRA authorities. They would be, however, covered under the Clean Water Act authorities.

In the case of larger generators, some aspects of their activities are also covered by RCRA. For example, storage and treatment and things of that kind.

Mr. Edgar. Let me ask you a followup question. Even if all current pretreatment standards are put into place, will those standards govern all categories of hazardous wastes that are currently placed into sewers?

Mr. Perez. Mr. Edgar, perhaps I can answer that question. The pretreatment program, which is a rather complex program, has a number of pieces. I think the answer to your question is that, no, that categorical standards would be issued only for those issues which, on a national basis, discharge a significant amount of toxic pollutants. But there is another part to the pretreatment program which we call the prohibitions.

These are Federal standards which are currently issued in regulations, have been in effect for many years, that are federally enforceable, also enforceable by States and the treatment works, which prohibit the introduction of pollutants into sewers, including toxics, which would cause problems. Those standards are not limited to any particular industry, but in fact preclude or prohibit the introduction of any pollutant from any source which would cause I think the kinds of problems that you are concerned with.

Mr. Cook. I would just like to add that after the sludges are formed, with whatever wastes are treated in the publicly owned systems, they are subject to regulation under the Resource Conservation and Recovery Act.

Mr. Edgar. But the answer to the question is actually no?

Mr. Roe. If the gentleman would yield, that is not accurate. I think the answer to the question is that the pretreatment issue on any substance that goes into the sewer disposal system is subject to the Water Pollution Control Act fundamentally and basically.

Mr. Perez. That is correct, Mr. Chairman.

Mr. Edgar. Mr. Chairman, your answer to the question is yes.

Mr. Roe. Yes, sir.

Mr. Edgar. And what I heard the gentleman who answered first say was no.

Mr. Roe. No, no. The Water Pollution Control Act has a pretreatment section that refers to specific types of pollutants that are involved, but it does not limit you to those particular pollutants. Any pollutant that is going to be deleterious to the ultimate formation of the sludge that could be environmentally hazardous is subject to the presently existing act.

Ms. Lavelle. Yes, Mr. Chairman. In addition, we are saying there is an insurance policy, because RCRA has direct authority over the sludges formed, so you get it at either end. So there is currently no pollutant either in RCRA or in Water Act that is not covered at some end of the cycle there.

Mr. Edgar. So you are saying that the current pretreatment standards that are put into place presently will govern all categories of hazardous wastes that are currently placed into sewers?

Mr. Perez. Yes, Mr. Edgar.

Mr. Roe. You have the authority, whether your list is complete or not it is questionable. You have the authority, however.

Mr. Perez. Again, to clarify it, there are two kinds of standards. When you use the term "categorical standards," the answer would be no, but we have other standards. The law provides for other standards, which I spoke of, which cover the introduction of pollutants from any source, not limited to any list of industries, and those standards are in effect.

Mr. Edgar. Thank you.

Mr. Roe. The gentleman from Chicago, Ill.

Mr. Fary. Thank you, Mr. Chairman.

Ms. Lavelle, I join with my colleague from Pennsylvania in supporting the formulation of a National Groundwater Commission. The time has arrived where the Congress must take action to assess and protect our vital ground water supply.

The 10 specific tasks set out in this bill will focus the commission's and the country's attention on specific remedies to protect our water supply. Although I believe the 1986 Federal line for the report should be shortened, I support the organized effort that this commission represents.

I have no further questions and I thank you for your testimony.

Mr. Roe. Thank you, Mr. Fary.

Let me sum up, if I may, for the committee as I see it. Listening to the testimony and the statements that have been made here today, I think, No. 1—the Chair is not concerned totally with the jurisdictional aspect of it although that is there, that is obvious, and we all know that. The legislation was referred to us sequentially to look into this matter as to the interest we would have, but I think the gentleman from Pennsylvania makes a very strong point on the basis of the enormous diversification of authority, jurisdiction and responsibility spread throughout the country.

The fact of the matter is if you want to talk to jurisdiction, we could have 435 people that could have some jurisdiction and interest someplace relating to the number of the Members of the House.

Our concern is that there is a lot of conflicting legislation and conflicting goals beginning to emerge in different pieces of legislation. I am sure you are aware of that. I am convinced that, in view of your statement, and the authority that EPA has, as far as pretreatment is concerned of any hazardous materials, it is going to go into a sewage disposal system, I think you have jurisdiction.

Also, I want to say for the record the committee is going to be holding intensive hearings on the second phase, if you like, of the Clean Water Act; that having to do with the BAT situation and toxic wastes and all the other issues that are before us. Whether or not we can conclude that in the time for this year's operation is something else again, because of the work schedule and the workload that we are faced with.

In regard to both gentlemen from Pennsylvania, I want to make a comment. I think it is important to your bill. Having said that, it seems to be extraordinary that this legislation would come to us and would not specifically relate to the membership on such a commission. We are about to start, intensive hearings on June 8, having to do with water resources development.

We have been through the water transportation system relating to water use and water supply which includes dredging of channels and God knows what. So it seems to me that there ought to be some more cohesive force, that is, an overview of what is going on in different legislative pursuits.

Otherwise, legislation in my judgment is being devised that is counterproductive. By the time you get done consulting with 25 other agencies, we will never get anything done.

Now having said that, I think this committee has a very important relationship here, having nothing to do with jurisdiction for the sake of jurisdiction, but the sophistication that is beginning to develop. We are recognizing that the interrelationship of ground water and recharging of ground water has a veritable enormous relationship to the water quality that we are dealing with.

Furthermore, we know that there is great controversy in 404, permit section. There is controversy in the ocean dumping issue, which is another matter we have to take up. The transfer of wastes from the air through precipitators and concentrating that, I am thinking of different hazardous waste materials, the concentration of materials in sewage disposal in pretreatment all relates to the quality of water supply and the quality of the environment.

Therefore, there is need, I think, for some cohesive force to start to be put together as an adjunct to our energies. We need to hammer policies that are not going to be contrary to each other, and I think that is basically the thrust the gentleman from Pennsylvania is speaking to.

I do not approve, however, in my personal opinion, that there would just be four House Members appointed. I don't have any effrontery, of course, to the Speaker, but it seems to me that that ought to be placed into a position that the members that are appointed ought to come from the respective committees that have the responsibility. There is no sense in having somebody—God forbid my saying this—from Foreign Affairs to be put onto this commission on water quality. That would be one change that I certainly would recommend to the members of both sides of the aisle here. We ought to be specific, that there ought to be an equal number of members from this committee, because of their expertise and their responsibility and the jurisdiction along with the Commerce Department who has the solid waste and toxic waste aspect of it. I think that is one issue.

The second issue you spoke to was the timeframe. I think that is a solid point you have made there. Our problem is I don't know if we have control over it. We are already deep up to our ears in the 1983 budget year. So that if we were to finance such a commission, it would seem to me we couldn't get started until 1984.

My experts tell us that it would take us 2 years to really do a good evaluation and coordination on that issue, before such a report would be able to come back and be helpful to the agencies that are involved, that would bring us to 1986, which I believe is the figure they spoke to in the bill.

I agree it is a short timeframe. The question before us, then, is if that timeframe were involved, and that was the point and thrust of your discussion, would we be telegraphing something along that line. Well, don't do anything for another year, and that, of course, is not what we wish to see happen at all, nor does it really have to happen. I guess we would still proceed dynamically under the existing laws that we have.

I think there is an integral relationship to our activities on this committee as far as reauthorizing and expanding, if we choose, or changing if we choose, the water pollution control legislation that we spoke to. That is going to take us a year or two to do that, so really the 1986 data is not really that far out, in view of the legitimate logistic problems and parliamentary problems that we are faced with.

Does anybody want to speak further to the bill? The gentleman from Pennsylvania.

Mr. EDGAR. Mr. Chairman, I agree with you that the problem that we had and the reason we put 1985 was to rush the study along, but the logistics of getting the funding, getting the commission in place, getting the expertise, making the contacts with people throughout the country, and doing a good substantive study, with recommendations, does take at least a 2-year period. If we could trigger it in starting October 1 of this coming year, we could get it done by the 1985 date. But there was some fear that there would be a timelag in getting set up.

To the point that you make about the selection, we thought hard and long about that, and I kind of agree with you that it would be good if you could outline how many people from which committees would be selected, and there may be a way we can negotiate that particular decision.

One of the reasons we selected the language that is here for "appointed by the Speaker" was the recognition of the large number of committees involved, and our intention is and would be to say so on the House floor when the bill comes forward, that they would be made up of members from this committee and from the Commerce Committee.

One thought. In talking with other people who have had expertise with commissions, is the need to have the commission large enough that it is well represented, and small enough that it can get something done, and I think you can expand the number of congressional members to some degree, but my only caution would be that from some of the other commissions that have existed, when they get too large, they sometimes get too unwieldy.

Mr. ROE. If the gentleman will yield, I thoroughly agree with that analysis, and serving on one of those commissions dynamically at the moment, but let me suggest a point of view. It seems to me from a purely pragmatic point of view, and historically speaking, coming back to 1972, when we passed the act in the first place, and I say it anyway, we literally usurped 17 different committees' jurisdiction because it was the only way the job could get done.

Now, in view of the fact that the entire water supply system of the United States lies in this committee, and in view of the fact that the water pollution control, water quality lies in this committee plus a half dozen other things, it seems to me that this committee is the one that has the primary responsibility regardless—and I certainly don't have any objection to the Commerce Committee, who has the primary responsibility vis-a-vis the toxic waste end of it being involved. So it seems to me that we ought to be, if we are going to go ahead and approve this, we ought to be saying there ought to be at least two members from this committee in my opinion and two members from the Commerce Committee.

Mr. **Edgar**. If it was up to me, I would say four members from this committee, but we have to be reasonable.

Mr. **Roe**. Ten. We appreciate what you are doing. We know there is a new rennaissance taking place in your operation, which we are all very pleased with.

Ms. **Lavelle**. Thank you.

Mr. **Roe**. I think that your concerns are legitimate, but I think also from the overall point of view, if we are going to coordinate, there has got to be somebody someplace that has to coordinate. The commission could very readily be the type of agency that could gain the attention of the people of the United States, and say to them because you can't see it it doesn't mean there aren't some problems there.

We visually can reserve a reservoir whether it fluctuates in levels and people can come out and test it, but ground water is by far a different picture.

I don't have any further questions. Does anyone have any further questions?

We want to thank you very much for your splendid testimony. Thank you so much for spending your time with us this morning. We appreciate your valid testimony.

Ms. **Lavelle**. Thank you.

Mr. **Roe**. Our next witness, then, will be the U.S. Army Corps of Engineers, represented by Mr. Lloyd A. Duscha, Chief, Engineering Division, Office of the Chief of Engineers. Accompanying him is Mr. Ronald C. Allen, Assistant Chief Counsel for Legislation and General Law.

Mr. Duscha and Mr. Allen, welcome to the committee.

TESTIMONY OF LLOYD A. DUSCHA, CHIEF, ENGINEERING DIVISION, OFFICE OF THE CHIEF OF ENGINEERS, U.S. ARMY CORPS OF ENGINEERS, ACCOMPANIED BY RONALD C. ALLEN, ASSISTANT CHIEF COUNSEL FOR LEGISLATION AND GENERAL LAW

Mr. **Duscha**. Mr. Chairman, I do not have a prepared statement. I do have some notes.

Mr. **Roe**. The gentleman will proceed.

Mr. **Duscha**. Thank you, Mr. Chairman.

As I stated earlier, we did not prepare a statement having received word late yesterday afternoon.

Mr. **Roe**. We appreciate the burden that has been placed upon you. We really appreciate your being here this morning.

Mr. **Duscha**. I think at the outset it would be well if I set the stage as far as the Corps of Engineers is concerned. First, we do acknowledge that EPA is the expert in hazardous waste. Second, we acknowledge that the U.S. Geological Survey is the expert in ground water matters.

As far as section 9 of H.R. 6307 is concerned, we have not developed a position at the present time. I would certainly acknowledge that ground water is a valuable portion of the hydrologic cycle. If we look at our total water inventory on this earth, we will find that the ground water inventory is probably about 65 times greater than the surface water inventory.

As we become more concerned with water supply needs in the future, ground water will have to play a greater part. Ground water not only has importance from a quantity standpoint, it has importance from a quality standpoint also.

While the Corps of Engineers has primarily dealt with surface water, we have been cognizant of the importance of ground water. In our studies where we have formulated projects, we have been careful so as not to affect the quality of the ground water, or to impede the ground water flow.

We are also concerned about maintaining surface water flows and ground water flows so as to abate the potential for salt water intrusion in our coastal areas. During the formulation of reservoir projects, we also look at the potential for the reservoirs to recharge the ground water aquifers, and this applies especially to the semiarid areas of the West.

The latter is being looked at in much detail by us in conjunction with the Department of Commerce on the High Plains study. The High Plains study is concerned with the Ogalala Aquifer, which extends from Nebraska to the northwest part of Texas.

In our military construction program, we also have an active program for controlling toxic wastes, especially as to how such wastes might affect the quality of the ground water in the area. As part of our efforts in assisting EPA with the superfund program, we will be involved in designing and constructing systems which will contain hazardous wastes to prevent them from entering the ground water aquifer.

Mr. Chairman, this concludes my statement.

Mr. ROE. I think what you are developing for the benefit of myself and the other members of the committee, is that there is an integral relationship between what your responsibility is in water resources development as it relates to ground water. I think you made a very telling point, because I am a little knowledgeable in the field, for example, particularly in salt water intrusion.

As I recall, the charts that the corps has under EPA, that you have to prepare environmental impact statements, environmental impact assessments, and all of those relationships have to bear upon what happens to the resources including ground water. Isn't that a correct statement to make?

Mr. DUSCHA. That is correct, sir.

Mr. ROE. I would assume that when we are dredging channels, and things of that nature, that is all part of that environmental impact statement. What effect is it going to have on ground water, so there is a relationship. It seems to me that as we start to exhaust the ground water resources, exhaust in a sense of commitment to users—I am thinking particularly in the far West and the Southwest—that the other residual resources available, which many of the cities; and I am thinking of Phoenix, for example, and other cities which are dealing in ground water right now. That is also the situation in Colorado as far as our farmers are concerned. So, again, the coordination of this effort is important with our responsibility. Is that a fair statement to make?

Mr. **Duscha**. That is certainly correct, and I think ground water is something we should consider in the total water resource problem of this Nation.

Mr. **Roe**. Fine.

The gentleman from Arkansas.

Mr. **Hammerschmidt**. Mr Duscha, I don't have any questions regarding the Clean Water Act or the ground water situation, but I thought maybe the corps was here to testify on the Truman-Hobbs bill. I don't want to mix that into our hearing record at this time, but are you prepared to answer questions on that subject later on?

Mr. **Duscha**. We are prepared to answer questions on that whenever the chairman chooses.

Mr. **Hammerschmidt**. Thank you. I know that if you do attempt to move water from Arkansas to the high plains of Texas to that particular underground reservoir, the Corps of Engineers would be involved and we would be too.

Mr. **Duscha**. Yes.

Mr. **Hammerschmidt**. I won't get into that subject today.

Mr. **Duscha**. Thank you.

Mr. **Roe**. The gentleman from Illinois.

Mr. **Fary**. I have no questions at this time, Mr. Chairman.

Mr. **Roe**. The gentleman from Pennsylvania.

Mr. **Clinger**. Thank you, Mr. Chairman.

I just wonder, Mr. Duscha, you mentioned that you have been working in cooperation with the Department of Commerce on the High Plains study regarding the Ogalala Aquifer. What is the role of the corps in that ongoing study?

Mr. **Duscha**. Our role is primarily technical support from an engineering standpoint. One of the roles that we have is to address water transfers; that is, the potential for effecting such transfers. We are also looking at how we might affect recharging the aquifer.

Mr. **Hammerschmidt**. Will the gentleman yield?

Mr. **Clinger**. I will be happy to yield.

Mr. **Hammerschmidt**. Mr. Duscha, do you remember where the authorization came from for that study when it was authorized? Do you remember the background? We can easily research it.

Mr. **Duscha**. I am sorry, I can't give you that.

Mr. **Allen**. I think you would probably find it contained in either the 1974 or 1976 Water Resource Development Act.

Mr. **Clinger**. Do you know what the status of the study is at the present time? Have there been any preliminary conclusions made?

Mr. **Duscha**. I don't think the High Plains Study Council has reached the conclusion stage, at this point.

Mr. **Clinger**. What is the timetable for that study?

Mr. **Duscha**. I would have to furnish that for the record. I don't have it with me.

[The following was received for the record:]

The High Plains Study Council has circulated a draft of the Executive Summary, including tentative recommendations, and is holding public meetings. After the input has been considered, the report will be made final. It is anticipated that the report will be available toward the end of the calendar year.

Mr. CLINGER. Thank you.

Mr. ROE. The gentleman from Pennsylvania.

Mr. EDGAR. I was going to ask the same question about the time frame on that particular study. I look forward to having the answer.

Can I ask a naive question: What is the proper pronunciation of that, Ogalala?

Mr. DUSCHA. Og-a-la-la.

Mr. EDGAR. Ogalala.

My wife read a book on Indian names, and Indian tradition, and that word was used, and I used it one evening over dinner and she told me I was mispronouncing it, so I appreciate it.

Mr. CLINGER. Would the gentleman yield? I think the Ogalala is a tribe of the Sioux Indian nation.

Mr. EDGAR. I am not going to sue EPA over it nor the Army Corps of Engineers. Thank you.

Mr. ROE. The gentleman from Minnesota? The gentleman from New York?

Mr. MOLINARI. Just one or two questions. Thank you, Mr. Chairman.

For my information, could you please tell me at what point the corps gets involved in a ground water contamination problem?

Mr. DUSCHA. Sir, I presume you are talking about ground water contamination in respect to the superfund program?

Mr. MOLINARI. Not necessarily. Let's assume there is an area that has become aware of a problem in that their drinking water supply in the aquifer is suspected to be contaminated. Do you have to be called in by another Federal agency or by a municipality or local government? I am trying to find out how you become introduced, the corps becomes introduced to the problem.

Mr. DUSCHA. I think we probably wouldn't be called in on the contamination aspects of aquifers.

Mr. ROE. If the gentleman would yield, I understand there was just an agreement entered into, which I am sure you wouldn't be knowledgeable of yet, just recently between EPA and the corps.

Mr. MOLINARI. I can't hear you, Mr. Chairman.

Mr. ROE. It is my understanding that recently an agreement has been entered into between the corps and EPA where the corps will be taking on some of the responsibilities of that program.

Mr. MOLINARI. That was my understanding as well, Mr. Chairman. That is why I raised the question. I don't know whether there are any ground rules worked out yet.

Mr. ROE. It is a new agreement.

Mr. DUSCHA. The agreement concerns the superfund program.

Mr. ROE. Right.

Mr. DUSCHA. And basically our function will be to devise and to construct means of containing pollution potential from either the surface or coming from the side through the ground waters.

Mr. ROE. Would the gentleman yield?

Mr. MOLINARI. I would be delighted to.

Mr. ROE. However, if this committee were to extend a responsibility to the corps, which they can do on water resources, then the corps would pursue that particular program, because that is the jurisdiction of the corps and that is the jurisdiction of this committee. Isn't that a correct statement to make?

Mr. **Duscha**. That is correct.

Mr. **Roe**. I thought so.

Mr. **Molinari**. That clears up my question. Thank you, Mr. Chairman.

Mr. **Roe**. There are no further questions. If you wouldn't mind staying around a little bit until we get to the other part of that bill, we would appreciate it. We thank you very much for the moment.

Mr. **Duscha**. Thank you, sir.

Mr. **Roe**. Our next witness is Mr. Gordon D. Bennett, Chief, Branch of Groundwater, U.S. Geological Survey, Department of the Interior.

Mr Bennett, welcome. We want to welcome you to the committee, Mr. Bennett. Please proceed.

TESTIMONY OF GORDON D. BENNETT, CHIEF, BRANCH OF GROUNDWATER, U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Mr. **Bennett**. Thank you, Mr. Chairman. We did not have a prepared statement because of the brevity of the notice. It was suggested that I begin with a 3-minute course in ground water hydrology.

Mr. **Roe**. It might be a good idea.

Mr. **Bennett**. Which I can do using this picture. This tank has an inflow, there is storage in the tank, there is flow through it and there is an outflow. I use that as an analogy to the ground water system. The inflow is precipitation. Below this line here, the water table, the Earth is saturated, all cracks and crevices full of water. There is a lot of water in storage but it is dynamic. It flows through the system and discharges to the surface; it always discharges to the stream system or sometimes to use by plants.

We talk about individual aquifers, but in fact aquifers are integrated into a single flow system. There is always flow from one end to another and ultimately to the surface water system.

If I put a pump into this tank and withdrew water, two things would happen. I would decrease the amount of water in storage in the tank, and I would decrease the outflow through this tap. If I utilize wells in the ground water system, the same process occurs.

The first thing that has to happen, inevitably, I must take water out of storage in the system. This decreases hydraulic gradients in the vicinity of the stream and decreases the natural outflow to the stream. Ultimately, I may draw the water table down to the point that the stream actually feeds the ground water system.

When we pump, we can withdraw from storage for long periods, but sooner or later the system will come to an equilibrium in which the recharge balances whatever we are drawing out through pumpage, and whatever is now left coming out through the natural stream system. It may be, if the rate of pumping is high enough, that what we may do is draw water levels down until the rate of pumpage decreases due to inefficiency of the pumping system; and then we come to a new equilibrium, but at a much reduced rate of withdrawal.

You can think of the ground water system as a chemical treatment plant in which, as the water moves through the system, things happen to it chemically and its quality changes continuously without any operation by man.

There is a graph here which illustrates ground water use. I will pass it up. Current use is about 88 billion gallons a day. Irrigation is the biggest, as the graph shows. It has grown continuously over the past 30 years, but although irrigation is the biggest single use, half of the people in the Nation do depend on ground water for domestic supply.

Velocities of ground water are very small. This means that it takes a long time for ground water contamination to develop, and a very long time indeed for that condition to be corrected once it has developed.

Shallow contamination is the most common contamination problem, since most wastes are disposed of near the surface. One of the problems that this creates is sustained release of contaminants to streams, since the ground water system ultimately discharges to streams.

Two-thirds of the ground water use is concentrated in eight States.

In the Geological Survey our business is ground water investigations, in which the objective ultimately is to achieve a predictive capacity, through which we can tell water managers and planners, "If you do this in the way of pumpage, the results will be this in terms of drawdown of water levels, reduction of storage, reduction of stream flow or whatever. If you do this in the way of waste disposal, the contaminant will move in these directions and at these concentrations," and so on.

That is my 3-minute course.

Mr. **Roe**. I think you have done a very good job.

Does anyone have any questions? The gentleman from Pennsylvania.

Mr. **Edgar**. Mr. Chairman, just one.

Your statement and the General Accounting report of May 6, 1982, points out that a large amount of our population really relies on ground water. In this document it says, "The greatest potential as well as the greatest need for better water management and conservation is in the irrigated areas of the West.

"Nationwide, irrigation accounts for over 80 percent of the consumptive use of water, most of which occurs in the arid and semiarid areas of the West. Using present practices, irrigation is relatively inefficient because crops actually consume less than half of the water applied to them."

It goes on and talks about that. Could you say a word about the need for conservation in the area of ground water use in terms of irrigation, and what some of our information might be in that area?

Mr. **Bennett**. Yes. Irrigation efficiencies can be improved. This will do some good. However, there is another factor that wasn't mentioned, that I don't recall being mentioned in the GAO report, and that is that if crops are given more water than they need, most of the balance percolates in field seepage and goes back to the aquifer. Now, there are some nonbeneficial evaporative losses there, particularly in spray irrigation, and that could be conserved.

But, for example, in the Ogalala Aquifer the tendency has been to apply more water than the crops have needed, but they haven't used that water. It has gone back to the aquifer in the form of field seepage, recharge: so there are limits to what improved irrigation technology can do. We can make some savings, but they are limited.

Mr. Edgar. Isn't there some degradation of that water, perhaps, with pesticides or sediment or fertilizers or the quality of the minerals that are in that water?

Mr. Bennett. Yes, there is. Every time you put water through a cycle, every time you pump ground water, put it through a cycle of use and then return it to the ground water system or to the stream system, the quality is going to be different.

Mr. Edgar. Thank you for your comments.

Mr. Roe. The gentleman from Arkansas.

Mr. Hammerschmidt. Mr. Bennett, would you tell us a little bit about the technology at hand or man-made use of recharging the aquifer. Do we do that quite a bit?

Mr. Bennett. We don't do it a great deal. Generally the economics is not favorable.

Mr. Hammerschmidt. It just isn't practical to do?

Mr. Bennett. That is right. There are two methods: injection wells, which are a lot of trouble, and surface spreading. There are a lot of maintenance problems with injection wells, and you have really got to have a high economic stake in getting the fluid into the ground to be willing to put up with that trouble.

For example, the oil companies in their secondary recovery operations use fluid injection. That is because the product that they are getting is very valuable. But injection wells for storing water or adding water to acquifers has not, in general, proven to be economical.

Now, surface spreading of water has been used in some places, but there again, you have the problem of taking land out of other use, for the surface spreading operation; and there are evaporative losses and a great many other problems.

Mr. Hammerschmidt. Thank you.

Mr. Roe. Are there any other questions? The gentleman from Pennsylvania.

Mr. Clinger. Thank you, Mr. Chairman.

You mentioned that it takes a long time to pollute an aquifer, or to contaminate it, and an even longer time to get rid of that pollution. Can you give us an idea of what kind of timeframes we are talking about there?

Mr. Bennett. I think, of course, it varies because ground water velocities vary. But we are noticing ground water contamination now in areas where we have been disposing of wastes in shallow pits and lagoons for 60 or 70 years, and so that order of time interval, decades, for example is not unusual, and this is for fairly shallow contamination. In general, the deeper you go in the ground water system, the longer the residence times, the slower the velocity.

Mr. **Edgar**. Would the gentlemen yield?

Mr. **Clinger**. I will be happy to yield.

Mr. **Edgar**. Is there any evidence of an exponential doubling? What I mean by that, is there any indication that while it takes a long time, the more contamination that comes, the shorter the time period comes for major contamination?

Mr. **Bennett**. The travel times do not double.

Mr. **Edgar**. I am not talking about the travel times. What I am talking about is that the pollutants build up over time, and in the early periods, the level and the quantity of the pollutant is not sufficient to be serious to the hazardous nature of the polluting substance, but over time, does it in fact, in the last few years of major contamination, accelerate?

Mr. **Bennett**. I would hate to generalize. It depends. For example, if you have a constant input rate of pollutant, and you go downstream in an aquifer and wait for it, what you see is a sort of a very slow buildup, followed by a period of steep buildup, and finally a leveling off until the concentration at your monitoring point is the same as the concentration of whatever you are introducing.

Now, what happens in practice, of course, as a municipal area develops, an industrial area develops, more and more pollutants tend to be added over time, and so that, of course, changes in the whole picture. And that may be what we are seeing as an accelerating rate of contamination. We are also seeing accelerating detection because our methods of sampling and testing are better now than they ever were.

Mr. **Clinger**. Once you have detected a problem, is there anything, is there a technology to address the problem or is it just a question of time, just waiting it out, if you will, I mean stopping the induction of the pollutant into the aquifer and waiting for that to work itself out of the system, or is there anything that we can do?

Mr. **Bennett**. There are things that can be done. There are engineering strategies that can followed. We are beginning to do some research on the technology of aquifer reclamation, but it is a tough proposition. The simplest thing you can do is pump the polluted water back out and try to do something about treating it. But what happens, if you can imagine a small opening in the earth, the velocity tends to be highest along the centerline of the opening, and out along the walls of the opening there is very little movement. As the contaminant goes through the first time, some of it diffuses to the walls of the opening, and then as you pull the liquid back through, attempting to remove the contaminant, it takes a long time for that stuff to diffuse back into the zone of flow. So that, in general, you are talking about moving back perhaps 20 or 30 times the volume of water that you actually admitted in the first place, in order to get the concentrations down where you want them. And you never get them to zero, but in order to get them down to acceptable limits. It is a tough proposition. The cleanup is going to be a tough proposition.

Mr. **Clinger**. Thank you.

Mr. **Edgar**. Would the gentleman yield further?

Mr. **Clinger**. Yes, I will yield.

Mr. **Edgar**. I just wanted a comment from you in terms of your knowledge of ground water and ground water degradation. What are your feelings about the future of ground water? Are you alarmed, concerned, or are you pretty optimistic that we will be able to handle our ground water needs in the future without fear of serious pollution?

Mr. **Bennett**. I am very optimistic. I think that we haven't done everything right in the past, but certainly we can manage the thing properly, if we obtain the information that we need, and if we simulate in advance. That is, if we build models and we say, "All right, if we are going to do this in terms of ground water development and waste disposal this is what will happen;" and if that information is clearly presented to the people who are making the decisions, then I think ground water can be managed like any other resource, and managed successfully. I am optimistic, yes. I think technology is equal to it.

Mr. **Edgar**. Thank you, Mr. Chairman.

Mr. **Roe**. The gentleman from New York.

Mr. **Molinari**. Mr. Bennett, the last year or two we have got many cases reported throughout the country of illegal dumpers of toxic chemicals, and of course it has gotten into the ground water system. I was interested in the point you made that it moves at a very slow rate. In terms of chemicals themselves, once you identify where they are at, where the contamination has occurred, does technology exist to be able to remove most of that, if you catch it early enough?

Mr. **Bennett**. The technology, some technology exists now. We are looking at new technologies. The thing that would generally be done now is to pump the stuff back out, and try to treat it. That is really what 90 percent of the technology consists of now. Things that are being considered are chemical treatment in place, that is, injecting other things which will neutralize the toxic wastes. This is a very new area, and I don't know whether it will prove feasible.

Mr. **Molinari**. But it would be critical, then, to get on the scene as quickly as possible, and to do that pumping out of the ground water table?

Mr. **Bennett**. Yes. Another technology, there is also a technology of containment. In some shallow cases, people try to put down grout curtains, things of that sort, barriers of various kinds.

Mr. **Molinari**. Just one last question, if I may. How long does it take you when you go in to run samples and tests to find out what kind of a problem exists?

Mr. **Bennett**. That varies all over the place. The sampling, the laboratory testing, is no problem; but getting on the ground and deciding whether you have to drill holes, and where to drill them, and getting all that done, can take several weeks, depending on conditions.

Mr. **Molinari**. How about the laboratory work?

Mr. **Bennett**. The laboratory work is usually a matter of days, if you are serious about it, I mean if it is an urgent matter.

Mr. **Molinari**. You can actually identify the specific chemicals, and I understand there are 30,000 chemical compounds in a matter of days you would be able to identify?

Mr. **Bennett**. Wait a minute.

Mr. **Molinari**. I am just asking the question.

Mr. **Bennett**. I think you could identify the fact that you had a problem. Whether the chemist would be able to lock on to everyone of the things that might be in there, I wouldn't be able to say.

Mr. **Molinari**. Thank you.

Mr. **Roe**. No further questions, thank you very much, Mr. Bennett, for your testimony. We really appreciate it.

In order to keep the continuity of this issue going, we would like to have Mr. Jeff Zimmerman and Mr. Daniel J. Greenwald.

Jeff Zimmerman is the manager of external affairs of the Occidental Petroleum Corp., and Mr. Daniel J. Greenwald represents the American Paper Institute and the National Forest Products Association.

If you don't mind both coming at one time because then we can interchange our ideas. Suppose we recognize Mr. Zimmerman first from the Occidental Petroleum Corp.

Mr. Zimmerman, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

CMA

CHEMICAL MANUFACTURERS ASSOCIATION

WRITTEN STATEMENT OF
JEFF ZIMMERMAN
OCCIDENTAL PETROLEUM CORPORATION
ON BEHALF OF
CHEMICAL MANUFACTURERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES
COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
ON
HR 6307

May 26, 1982

2501 M Street, NW • Washington, DC 20037 • Telephone 202/887-1100 • Telex 89617 (CMA WSH)

The Chemical Manufacturers Association is a non-profit trade association whose company members represent more than 90% of the productive capacity of basic industrial chemicals within this country. CMA has made a preliminary analysis of H.R. 6307 as it emerged after markup by the House Energy and Commerce Committee. The following is a description of the concerns raised by this preliminary analysis. It does not purport to be an exhaustive statement of the problems that may be posed for the chemical industry by the provisions of H.R. 6307.

Section 4

Section 4 of H.R. 6307 requires EPA to report to Congress specifying "the types and quantities of . . . hazardous wastes which are exempted pursuant to" EPA's regulations that exclude from the definition of solid and hazardous waste, materials that mix with domestic sewage in sewage systems discharging to publicly owned treatment works (POTWs). This report is to include "recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health in the environment" or whether such mixtures should be regulated under subtitle C of RCRA.

The study required by Section 4 is redundant with a study currently being conducted under the Clean Water Act by EPA of industrial wastes, including hazardous wastes, discharged to sewers leading to POTWs. This study is collecting data regarding the types and quantities of such discharges. It considers the degree of treatment being accorded such wastes prior to discharge. This study is designed to enable EPA to select the soundest national strategy for controlling discharges to POTWs. A particular focus of this study is the compatibility of various toxic wastes with existing POTW operations.

Sections 307 and 402 of the Clean Water Act requires the development of local pretreatment programs to control discharges to POTWs. Regulations pursuant to these sections prohibit discharges of pollutants which pass through a POTW or which interfere with its operations. These regulations are in the process of being implemented through adoption of municipal ordinances.

Routine industrial discharges thus are subject to local arrangements designed to ensure that industrial effluents sent to POTWs will not interfere with the POTWs' operations or compliance with NPDES permit requirements. CMA supports the full development and implementation of such local programs in all affected communities. CMA does not support rigid, nationally uniform, categorical pretreatment standards. The scope of pretreatment appropriate in a given instance can best be worked out through consideration of local factors.

For the foregoing reasons, CMA believes that the study required by Section 4 of H.R. 6307 is unnecessary and potentially counterproductive. The subject of industrial discharges to POTWs is being adequately dealt with under the Clean Water Act and a sensible program that tailors pretreatment requirements to local circumstances is in the process of implementation. Beginning a separate study, implying possible additional regulation of such discharges under RCRA, could potentially disrupt the implementation of the Clean Water Act with respect to such discharges.

Sections 6 and 11

Sections 6 and 11 of H.R. 6307 introduce an undefined term "substances identified or listed under Section 3001." This new term is used in place of "hazardous wastes" even though the latter term defines the scope of EPA's jurisdiction under Subtitle C of RCRA. Obviously, EPA's regulatory jurisdiction under this statute should not be extended beyond management of solid and hazardous wastes. Indeed, Section 3001 itself addresses only the identification and listing of hazardous wastes. Accordingly, use of the term "substances identified or listed in Section 3001" in H.R. 6307 is particularly confusing.

The Committee's use of the term "substances identified or listed under Section 3001" could mislead some to believe that an expansion of EPA's jurisdiction under RCRA is intended. The meaning of this term is especially obscure because no hearing record exists to elaborate the concerns that motivated its inclusion in H.R. 6307.

Pursuant to Section 3001, EPA has issued four "characteristics" to be used by generators of solid wastes to identify whether wastes should be deemed hazardous. These characteristics identify wastes as hazardous on the basis of ignitability, reactivity, corrosivity and so-called extraction procedure toxicity. One or more of these characteristics would apply to many products that move in commerce. Use of the term "substances . . . identified under Section 3001" could lead some persons to conclude, erroneously, that RCRA is concerned not only with wastes, but also with products moving in commerce that exhibit one or more of these characteristics.

The term "substances listed . . . under Section 3001" may cause similar and even more significant confusion. Pursuant to its authority under Section 3001, EPA has listed in its regulations (40 C.F.R. § 261.33) hundreds of commercial products that are to be deemed hazardous wastes if and when they are discarded or intended for discard. To state, as H.R. 6307 does, that EPA must promulgate regulations governing "use or reuse" of "substances listed . . . under Section 3001" falsely implies a regulatory obligation to control management of these products before they become wastes. Here again the language of Section 3001, which relates exclusively to hazardous wastes, should govern. Nevertheless, H.R. 6307 as reported may cause needless, counterproductive confusion by its unjustified use of the term "substances" to replace "wastes."

Use of the term "substances identified or listed under Section 3001" is bound to cause widespread confusion. Substitution of this puzzling term without due deliberation or explanation in the course of the work of the Subcommittee and the Full Committee is inappropriate. If enacted, the only effect of this term may be to distract EPA, the states and the regulated community from the sound hazardous waste management goals of RCRA.

Section 7(a)

Section 7(a) of H.R. 6307 adds a new Section 3005(g) to RCRA, stating that any RCRA permit shall address "any release of hazardous waste from such facility which occurs prior to the date of issuance of such permit." This provision could be falsely construed to invest permitting officials with virtually unchecked discretion to compel remedial measures with respect to inactive land disposal facilities, not covered by Subtitle C of RCRA, as a condition of permitting of active RCRA facilities. Regrettably, the Committee Report contains but a single, unclear sentence elaborating this provision. In one important respect, it appears to contradict the language of Section 7(a), thereby compounding the difficulty of interpreting this provision.

Section 7(a) states that "[a]ny permit" issued to an existing hazardous waste management facility must address "any release of hazardous waste from such facility" which occurred prior to issuance of the permit. Thus, under Section 7(a) any responsibilities of the owner or operator of the facility with respect to such prior-occurring releases are to be carried out pursuant to a permit that has been issued and not as a precondition to the issuance of a permit. Nevertheless, the report language incorrectly implies that remediation could be required before a permit issues. It states that an interim status facility must control such pre-permitting releases "within the limits of the permitting standards prior to issuance." (Emphasis added.)

The apparent purpose of Section 7(a) is to affirm EPA's proposed strategy for permitting of existing land disposal facilities, as that strategy was outlined in December of 1981. Under this approach, EPA would require existing facilities to monitor groundwater and, upon detection of contamination by the existing facility, to undertake necessary and appropriate remedial measures. Section 7(a) is intended to make clear that remedial measures may be required under the permit even with respect to a "plume" of contaminants that may have escaped the facility during interim status prior to award of a permit.

EPA has not suggested, and Congress should not imply, that permitting of an active RCRA facility should somehow be conditioned upon an undertaking by the owner or operator of that facility to conduct remedial steps with respect to landfill cells or impoundments at the same site which were closed prior to the effective date of EPA's RCRA regulations, November 19, 1980. Congress has stated a clear intent that such remedial action be carried out under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("Superfund").

Despite the apparent intent of Section 7(a) and the clear intent of Superfund, Section 7(a) may cause confusion because of its use of the terms "release" and "facility." The former is not a usual RCRA term, but rather is a term that appears throughout Superfund. The latter term is defined under EPA's RCRA regulations very broadly to mean "all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units." 40 C.F.R. § 260.10. Accordingly, where, as is not infrequently the case, inactive land disposal facilities are contiguous to active ones, Section 7(a) could be construed to allow RCRA permit writers to attempt to compel remediation with respect to inactive facilities that should be dealt with, as necessary, under Superfund. Moreover, Section 7(a) could be construed to allow a permit writer to compel remediation with respect to an impoundment "unit" located within the same "facility" as an incinerator "unit" as a condition of permitting the incinerator.

As noted above, the Committee Report fails to clarify these important distinctions. Instead, it strongly implies, contrary to the plain language of Section 7(a), that the effects of past releases are to be dealt with as a precondition to the award of a permit. Unless amended to make its purpose clear, or cogently elaborated in legislative history, Section 7(a) should be deleted from H.R. 6307. Its vagueness and overbreadth could provide an obstacle rather than an aid to the process of permitting existing facilities within the deadline required by Section 8 of H.R. 6307.

Section 9

Section 9 establishes a "National Groundwater Commission" to conduct a four-year study of groundwater issues and to report to Congress with "its recommendations for such legislation, and administrative actions, as it considers appropriate." While we support the concept of examining the nature and scope of contamination of the nation's groundwater resource, we have serious concerns about the scope of the proposed study and the composition of the Commission.

Section 9(b) enumerates ten analytic or assessment "duties" of the Commission. All ten duties require studying of the impact of hazardous waste management practices on groundwater contamination. While it is well-recognized that hazardous waste disposal has affected groundwater, the causes of groundwater contamination are far broader than hazardous waste disposal, and any comprehensive national study should not have such a circumscribed focus. The effects of management of non-hazardous municipal wastes, septic tanks, winter road salting, agricultural practices and numerous other nonpoint sources of potential groundwater pollution should be included as subject matter for the study.

The Commission is to have thirteen members, eight of which are to be members of the Congress and one, the Director of the Congressional Office of Technology Assessment. Thus, nine of thirteen members are to represent Congress, with only four members representing important interests of affected industries, the National Governors Association, the scientific community and public interest groups. A more sensible allocation would be four members of Congress and two members each from the subcategories identified in Section 9(c)(1)(C). Such a reallocation of the membership of the Commission would also broaden the technical base of the Commission, a step desirable in light of the many technical issues the Commission, if established, must confront.

Section 10

Section 10 of H.R. 6307, although it amends only one word of the Resource Conservation and Recovery Act, makes a change of potentially dramatic and sweeping consequence. This provision, however, has not been deliberated in hearings or in mark-up as befits such an amendment. A short discussion of the implications of this provision illuminates the need for further deliberation before enactment of Section 10.

Purpose of Section 10 -- As the report makes clear, by substituting the term "Act" for "section" in Section 7002(f) of RCRA preserving other common law and statutory remedies, H.R. 6307 seeks to circumvent a recent, well-considered judgment of the Supreme Court, Milwaukee v. Illinois, 451 U.S. 304 (1981). There the Court held that the Clean Water Act had preempted any federal common-law nuisance remedy available to the State of Illinois in a suit against the City of Milwaukee regarding discharge of sewerage into Lake Michigan. In reaching its holding the Court rejected a contention that a "savings clause" of the Clean Water Act similar to Section 7002(f) preserved federal common-law remedies after enactment of comprehensive, federal clean water legislation. A strong implication of the Committee's action, thus, is that it wishes to encourage suits in federal courts against owners or operators of hazardous waste management facilities even though they may be in full compliance with all applicable standards, regulations or requirements or orders issued pursuant to RCRA.

Legal Background -- The notion of a federal common law of nuisance emerged in the 1970's as federal judges sought to cope with interstate pollution problems that they perceived to be inadequately addressed by existing federal environmental statutes. Illinois v. City of Milwaukee, 406 U.S. 91 (1972) (decided prior to enactment of the comprehensive Federal Water Pollution Control Act Amendments of that year). This decision was a conscious exception to the principle enunciated in Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) that federal courts do not possess a general power to develop and apply their own substantive rules of decision.

When the Supreme Court first ackowledged the availability of such a federal common-law remedy in 1972, the plaintiff was a state that had first attempted to invoke the original jurisdiction of the Supreme Court, the controversy involved unquestionably interstate pollution of navigable waters, and prospective injunctive relief was sought. Illinois v. City of Milwaukee, 406 U.S. 91 (1972). Nevertheless, during the decade between the Court's decisions in Illinois v. City of Milwaukee (1972) and Milwaukee v. Illinois (1981), some federal judges concluded that federal common-law nuisance suits could be brought not only by states but by private parties, that interstate pollution need not be shown so long as navigable waters were affected, and that monetary damages as well as injunctive relief might be available. See, e.g., City of Evansville v. Kentucky Liquid Recycling Inc., 604 F.2d 1008 (7th Cir. 1979).

In its 1981 decision, Milwaukee v. Illinois, the Court was conscious of the need to stem the tide of such federal common-law actions. The Court stressed that whenever a federal statute governs a particular area, there is a presumption against the existence of federal common law in that area. This presumption is based on a recognition that the power of federal courts is limited under the Constitution. Only in "restricted instances" and as a "necessary expedient" should the federal courts develop such substantive common law in areas where Congress has enacted legislation. 451 U.S. at 313-14. The Court found that in enacting the comprehensive effluent limitations and permitting scheme of the Clean Water Act Congress had intended to extinguish any federal common-law nuisance in the area of water pollution. Two months later in Middlesex County Sewerage Authority v. National Sea Clammers Association, 69 L. Ed. 2d 435 (June 25, 1981), the Supreme Court held that the Marine Protection, Research and Sanctuaries Act of 1972 had similarly supplanted federal common law remedies with respect to oceanic discharges.

Practical and Policy Implications -- Subtitle C of RCRA establishes a comprehenisve scheme for regulation of generators of hazardous waste and owners and operators of hazardous waste management facilities. This comprehensive regime could fairly be held under recent Supreme Court precedent to supplant federal common-law nuisance actions that might be brought against such persons. The legal and practical significance of the RCRA program could be placed in grave doubt, however, if persons could be subject to suits in federal court, not on the grounds that they are out of compliance with the RCRA regime, but rather that their activities constitute a federal common-law nuisance. Such undefined liability could render the RCRA regulatory process practically meaningless. As the Supreme Court noted in its 1972 decision, Illinois v. Milwaukee, in such federal common-law actions "[t]here are not fixed rules that govern; these will be equity suits in which the informal judgment of the chancellor will largely govern." 406 U.S. at 107-08. Accordingly, such uncontrained legal exposure might inhibit construction of new, more efficient hazardous waste management facilities. Absence of adequate facilities will compound, not cure, the nation's hazardous waste management problems.

Section 10 is an invitation to plaintiffs to request federal courts to second-guess administrative determinations of national policy declared by Congress in enacting RCRA and by EPA in its implementing regulations. Federal courts are not better suited than Congress and the EPA to develop national policy in areas where Congress has enacted comprehensive legislation. The Supreme Court's recent decisions seek to place reasonable limits on such judicial activism.

Conclusion Regarding Section 10 -- In RCRA, Congress has set forth a comprehensive scheme regarding owners and operators of hazardous waste management facilities to meet detailed requirements as necessary to protect human health and the environment. The Supreme Court's decision in Milwaukee v. Illinois holds that after similar comprehensive congressional action in the Clean Water Act, the authority of federal courts to develop common law has been extinguished. Section 10, by attempting to repeal the Court's decision in this regard, might subject those who are in full compliance with all RCRA requirements to additional undefined federal liabilities.

Before taking such a serious step, the Congress should fully explore its policy implications and especially the question of whether attempted imposition of such open-ended liability will genuinely aid the objective of comprehensive and sound hazardous waste management. No such consideration has yet been given Section 10 of H.R. 6307.

* * * *

Conclusion

To meet deadlines imposed by budget legislation, the Energy and Commerce Committee prepared H.R. 6307 in a very short period of time. As a result, a number of significant issues posed by this legislation were never addressed in hearings; nor were they adequately deliberated by the Committee during markup. It is CMA's earnest hope that the foregoing substantial concerns will receive the careful attention of Congress before it completes action on legislation to reauthorize the Resource Conservation and Recovery Act.

CMA
CHEMICAL MANUFACTURERS ASSOCIATION

ORAL STATEMENT OF
JEFF ZIMMERMAN
OF OCCIDENTAL PETROLEUM CORPORATION
ON BEHALF OF
CHEMICAL MANUFACTURERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES
COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
ON
HR 6307

May 26, 1982

2501 M Street, NW • Washington, DC 20037 • Telephone 202/887-1100 • Telex 89617 (CMA WSH)

My name is Jeff Zimmerman. I am Manager of External Affairs for Occidental Petroleum Corporation. I am testifying on behalf of the Chemical Manufacturers Association (CMA). CMA is a non-profit trade association whose company members represent more than 90% of the productive capacity of basic industrial chemicals within this country. CMA members have a pervasive interest in legislation amending the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA), especially as such legislation may affect sound implementation of programs under other statutes, such as the Clean Water Act. Accordingly, we greatly appreciate the opportunity to participate in this hearing.

Today, I will address Sections 4, 9 and 10 of H.R. 6307, which raise issues under the Clean Water Act. I am submitting for the record a longer written statement elaborating these and other concerns unrelated to the Clean Water Act that CMA has identified in a preliminary analysis of H.R. 6307.

Section 4

Section 4 of H.R. 6307 requires EPA to report to Congress specifying "the types and quantities of . . . hazardous wastes which are exempted pursuant to" EPA's regulations that exclude from the definition of solid and hazardous waste, materials that mix with domestic sewage in sewage systems discharging to publicly owned treatment works (POTWs). This report is to include "recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health in the environment" or whether such mixtures should be regulated under subtitle C of RCRA.

The study required by Section 4 is redundant with a study currently being conducted under the Clean Water Act by EPA of industrial wastes, including hazardous wastes, discharged to sewers leading to POTWs. This study is collecting data regarding the types and quantities of such discharges. It considers the degree of treatment being accorded such wastes prior to discharge. This study is designed to enable EPA to select the soundest national strategy for controlling discharges to POTWs. A particular focus of this study is the compatibility of various toxic wastes with existing POTW operations.

Sections 307 and 402 of the Clean Water Act requires the development of local pretreatment programs to control discharges to POTWs. Regulations pursuant to these sections prohibit discharges of pollutants which pass through a POTW or which interfere with its operations. These regulations are in the process of being implemented through adoption of municipal ordinances.

Routine industrial discharges thus are subject to local arrangements designed to ensure that industrial effluents sent to POTWs will not interfere with the POTWs' operations or compliance with NPDES permit requirements. CMA supports the full development and implementation of such local programs in all affected communities. CMA does not support rigid, nationally uniform, categorical pretreatment standards. The scope of pretreatment appropriate in a given instance can best be worked out through consideration of local factors.

For the foregoing reasons, CMA believes that the study required by Section 4 of H.R. 6307 is unnecessary and potentially counterproductive. The subject of industrial discharges to POTWs is being adequately dealt with under the Clean Water Act and a sensible program that tailors pretreatment requirements to local circumstances is in the process of implementation. Beginning a separate study, implying possible additional regulation of such discharges under RCRA, could potentially disrupt the implementation of the Clean Water Act with respect to such discharges.

Section 9

Section 9 establishes a "National Groundwater Commission" to conduct a four-year study of groundwater issues and to report to Congress with "its recommendations for such legislation, and administrative actions, as it considers appropriate." While we support the concept of examining the nature and scope of contamination of the nation's groundwater resource, we have serious concerns about the scope of the proposed study and the composition of the Commission.

Section 9(b) enumerates ten analytic or assessment "duties" of the Commission. All ten duties require studying of the impact of hazardous waste management practices on groundwater contamination. While it is well-recognized that hazardous waste disposal has affected groundwater, the causes of groundwater contamination are far broader than hazardous waste disposal, and any comprehensive national study should not have such a circumscribed focus. The effect of management of non-hazardous municipal wastes, septic tanks, winter road salting, agricultural practices and numerous other nonpoint sources of potential groundwater pollution should be included as subject matter for the study.

The Commission is to have thirteen members, eight of which are to be members of the Congress and one, the Director of the Congressional Office of Technology Assessment. Thus, nine of thirteen members are to represent Congress, with only four members representing important interests of affected industries, the National Governors Association, the scientific community and public interest groups. A more sensible allocation would be four members of Congress and two members each from the subcategories identified in Section 9(c)(1)(C). Such a reallocation of the membership of the Commission would also broaden the technical base of the Commission, a step desirable in light of the many technical issues the Commission, if established, must confront.

Section 10

Section 10 amends the "savings provision" in Section 7002(f) of RCRA in an effort to escape the implications for RCRA of the Supreme Court's holding in Milwaukee v. Illinois, 451 U.S. 304 (1981). There the Court found that comprehensive federal clean water legislation had preempted so-called federal common-law remedies with respect to interstate surface water pollution. Section 10 attempts to preserve such common-law remedies with respect to possible consequences of hazardous waste management under RCRA.

This amendment may, thus, have sweeping legal consequence. Nevertheless, the Energy and Commerce Committee held no hearings on the desirability of this amendment. No substantial discussion of its purpose or possible consequences occurred in subcommittee or full-committee markup. At the insistence of the House conferees, a similar amendment to the Clean Water Act was rejected in the conference on the 1981 Clean Water Act Amendments, for lack of an adequate record.

Section 10 appears to invite suits in federal courts against owners or operators of hazardous waste management facilities who are complying fully with applicable standards, regulations or orders issued pursuant to RCRA. It thus could impose additional, undefined federal liabilities on such persons. CMA urges that, before taking such a serious step, Congress should carefully explore its policy implications.

No such exploration has yet occurred. CMA believes that deliberate review will reveal that such unconstrained legal exposure may inhibit construction of needed new, more efficient hazardous waste management facilities by calling into question the value of RCRA permits. Absence of such facilities may compound the nation's hazardous waste management problems.

Conclusion

CMA welcomes the interest of this Subcommittee in the important issues under its jurisdiction that I have touched upon. Each of them deserves a fuller airing than occurred in the Energy and Commerce Committee. CMA has other serious concerns with H.R. 6307. These are elaborated in the written statement being submitted for the record.

TESTIMONY OF JEFF ZIMMERMAN, MANAGER OF EXTERNAL AFFAIRS, OCCIDENTAL PETROLEUM CORP., ACCOMPANIED BY THEODORE GARRETT, COUNSEL, COVINGTON & BURLING, WASHINGTON, D.C., ON BEHALF OF THE CHEMICAL MANUFACTURERS ASSOCIATION; AND JACK GREENWALD, ATTORNEY, CHADBOURNE, PARKE, WHITESIDE & WOLFF, REPRESENTING THE AMERICAN PAPER INSTITUTE AND THE NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. ZIMMERMAN. Thank you, Mr. Chairman. Good morning. My name is Jeff Zimmerman, manager of external affairs for Occidental Petroleum Corp. I am testifying on behalf of the Chemical Manufacturers Association, a nonprofit grade association made up of approximately 190 companies in the United States, representing more than 90 percent of our Nation's domestic production capacity for basic industrial chemicals.

With me this morning is Mr Theodore Garrett of the law firm of Covington & Burling, counsel to CMA. CMA's member companies have a deep interest in legislation regarding the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act [RCRA], especially as such legislation may affect sound implementation of other statutes such as the Clean Water Act. We therefore greatly appreciate this opportunity to discuss with you today H.R. 6307, a bill to amend the Solid Waste Disposal Act.

I will focus my remarks on sections 4 and 9 of H.R. 6307 because they most directly raise issues under the Clean Water Act. I will also touch briefly on another aspect of this bill which raises an important issue for all Federal regulatory legislation and particularly for environmental legislation such as the Clean Water Act.

First let's examine section 4 of H.R. 6307. This provision would require EDPA to prepare a report for Congress identifying "the types and quantities of * * * hazardous wastes which are exempted" from EPA's present RCRA regulations. These regulations exclude from the definitions of solid and hazardous waste, materials that mix with domestic sewage in sewage systems discharging to publicly owned treatment works [POTW's].

The H.R. 6307 study is to include "recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health and the environment" or whether such mixtures should be regulated under the RCRA hazardous waste management program.

We feel strongly that the study called for by section 4 is redundant, and the underlying suggestion for regulation in this area under RCRA is ill advised. Currently EPA is conducting an extensive study under the Clean Water Act of industrial wastes, including hazardous waste, discharged to sewers that lead to POTW's.

This study is collecting data on the types and quantities of such discharges and the degree of treatment of these waste streams by the POTW's. A particular focus of this study is the compatibility of various toxic wastes with POTW operations. The study is part of EPA's work to select the soundest national strategy for controlling discharges to POTW's.

The important point here is that this issue is already well in hand under the Clean Water Act and EDPA is acting to implement the pretreatment programs mandated by Congress in that act. Sections 307 and 402 of the Clean Water Act require the development of local pretreatment programs to control discharges to POTW's.

Regulations pursuant to these sections prohibit discharges of pollutants which pass through a POTW or which interfere with its operations. These regulations are in the process of being implemented through adoption of municipal ordinances that assure POTW compliance with NPDES permit requirement and good operation of the treatment facilities.

Routine industrial discharges thus are subject to local arrangements designed to insure that industrial effluents sent to POTW's will not interfere with the operation of those treatment facilities, or with the POTW's operations or its compliance with NPDES permit requirements.

CMA supports the full development and implementation of such local programs in all affected communities, but does not support rigid, nationally uniform, categorical pretreatment standards. The scope of pretreatment appropriate in a given instance can best be worked out through consideration of local factors.

However, the point for today's hearing is not our concern with the details of EPA's pretreatment program. That clearly is an important issue and one that this subcommittee will likely address in the context of Clean Water Act reauthorization. The point for today is that the proper place to address pretreatmnent, POTW, and sewage issues is the Clean Water Act and not RCRA.

We therefore feel that the study called for by section 4 of H.R. 6307 is unnecessary and potentially counterproductive. The subject of industrial discharges to POTW's is being adequately dealt with under the Clean Water Act and a sensible program that tailors pretreatment requirements to local circumstances is in the process of implementation. Beginning a separate study, implying possible additional regulation of such discharges under RCRA can only disrupt the Clean Water Act's POTW permitting and pretreatment programs. We certainly do not need to redirect the resources of EPA, the States and municipalities, and the POTW's in the fashion contemplated by section 4 of H.R. 6307. We urge its deletion from the bill.

I would like to turn my attention now to section 9 of H.R. 6307. This section provides for establishment of a National Groundwater Commission to conduct a 4-year study of ground water issues and report to Congress "its recommendations for such legislation, and administrative actions, as it considers appropriate." While we support the concept of examining the nature and scope of contamination of our Nation's ground water resources, CMA has serious concerns about the scope of the proposed study and the composition of the commission.

Section 9(b) of H.R. 6307 enumerates 10 analytic or assessment "duties" for the commission. All 10 duties require studying the impact of hazardous waste management practices on ground water contamination. This single focus in H.R. 6307 may be attributable to the narrower focus of the RCRA experts in Congress on hazardous waste.

But the concerns of this subcommittee is on all water issues, whether related to groundwater or the closely and hydrologically connected surface waters. While it is well recognized that hazardous waste disposal has affected ground water, the causes of ground water contamination are far broader than hazardous waste disposal.

Any comprehensive national study should not have such a circumscribed focus. The effect on ground water of management of nonhazardous municipal wastes, septic tanks, winter road salting, agricultural practices, and numerous other nonpoint sources of potential ground water pollution should be included in the scope of this study.

As to membership, the Commission is to have 13 members, 8 of whom are to be Members of Congress and 1, the Director of the Congressional Office of Technology Assessment. Therefore, 9 of 13 members are from the Congress. Certainly these nine will represent broad national interests, but only four members will specifically represent important interests of the National Governors Association, the scientific community, affected industry and public interest groups.

We believe a more sensible allocation would be two members each from these last four groups, four Members of Congress and the Director of the Office of Technology Assessment. Such a realloction of the membership would preserve representation of national interests and at the same time strengthen the Commission's technical base. This is a very desirable step in light of the many technical issues that such a Commission would have to address.

Finally, I would like to touch briefly on section 10 of H.R. 6307. This section would amend the "savings provision" in section 7002(f) of RCRA in an effort to circumvent the U.S. Supreme Court's holding last year in *City of Milwaukee* v. *States of Illnois and Michigan*, 451 U.S. 304 (1981). The court held in this landmark case that the comprehensive nature of Federal clean water legislation supplanted Federal common law with respect to interest surface water pollution.

The present language of H.R. 6307 is apparently designed to create Federal common law remedies related to hazardous and solid waste management under RCRA.

This amendment would establish a legislative precedent in this area with potentially sweeping legal consequences. Its scope, if extended to other statutes, could not only affect other Federal environmental legislation, but all comprehensive Federal regulatory programs.

Yet, apparently, no hearings or substantial discussions during committee deliberations on H.R. 6307 have addressed the purpose or possible consequences and precedent-setting nature of section 10 of this bill.

CMA urges that, before taking such a serious step, Congress should carefully explore its implications. It would be wise to recall that, at the insistence of the House conferees, a similar amendment to the Clean Water Act was rejected in the conference on the 1981 Clean Water Act amendments because there had not been any meaningful exploration of the issue in deliberations leading to those amendments.

In conclusion I want to thank this subcommittee for the opportunity to discuss these important issues under its jurisdiction. Each of these issues deserves a much fuller airing than provided to date. We will submit a broader written statement on each of our concerns with H.R. 6307 for the information of this subcommittee and completeness of its record. I would be happy to answer any questions that you may have.

Mr. Roe. Thank you very much.

Our next witness will be Mr. Greenwald, Amerian Paper Institute and the National Forest Products Association.

Mr. Greenwald. Good afternoon. I would like to thank the chairman, Congressman Hammerschmidt and members of this subcommittee for allowing me to testify on behalf of the American Paper Institute and the National Forest Products Association with respect to the Resource Conservation and Recovery Act Reauthorization Act of 1982.

API and NFPA are national trade associations of the forest products industry who represent over 2,000 member companies, which own and manage forestlands and manufacture pulp, paper, and solid wood products.

My name is Jack Greenwald, and I am an attorney with Chadbourne, Parke, Whiteside & Wolff, counsel to API and NFPA. Because of the expedited scheduling of these hearings, my oral statement will be somewhat brief, and I apologize for not having submitted a statement in advance to the subcommittee.

Since spring of 1980, I have been intensively and extensively involved with the RCRA statutory and regulatory program, primarily with respect to the forest products industries. I have come to appreciate the complexity and nuances of the program, but more importantly, of the problem it is attempting to address. I have also come to appreciate the difficulties of applying such a program to the gamut of real world industries, and for industry, the difficulties of trying to comply with the program.

In this regard, let me make one clarifying and important point. The forest products industries are not high-risk industries; their major waste streams generally are not hazardous. Therefore, they provide good examples of the adverse and unintended effects on industry that can result when a complex program such as RCRA is drafted with major hazardous waste management facilities, high risk wastes, "bad actors," and problem sites in mind, but then is applied across the board to industries only marginally involved with wastes that may have some hazards. Some of these problems appear in this reauthorization bill.

No doubt there are problems with RCRA and with the regulatory program. Some of these problems are addressed in these substantive amendments. However, we question whether these amendments before the subcommittee today—through the hurried process by which they have been developed—are the proper response or vehicle to correct these problems.

We are concerned that: First, key issues have not been fully aired before Congress; second, the witnesses at the hearings have not been fairly, at least balanced until today; third, the procedure has been hurried; and fourth, there has been no real committee or subcommittee consideration of many of these substantive amendments. Indeed, many are counter to the currently developing ideas of necessary regulatory reform.

API and NFPA have some substantive problems with these amendments. For example, section 10 of this bill makes the allegedly technical change of the word "section" to "act" in section 7002(f) of RCRA. However, this "technical change" is meant to overturn a recent and important Supreme Court decision under the Clean Water Act, which was just described by Mr. Zimmerman.

API and NFPA are now studying this and other problems and hope to expand and elaborate on these in a written statement to follow.

On the positive side, the amendments do address certain recognized problems in a manner that we do, in concept and in places, support. Again, though, we are concerned that these amendments do not completely address certain problems and, may create new ones. Further, some of these issues may more properly be considered under other statutory vehicles, such as the Clean Water Act.

With respect to section 4, hazardous waste and domestic sewage, we do not object to the approach because it properly orders the compilation of hard data before regulation to determine if there is a real environmental problem and what its parameters are. However, we question whether the proper vehicle is RCRA. Rather, we think it may be the Clean Water Act pretreatment provisions.

Similarly, a Groundwater Commission may be a good idea to study the problems of ground water contamination and supply. However, it should be developed by the congressional committee with proper jurisdiction over water resource issues.

Our greatest problem is in sections 6 and 11 of the reauthorization bill dealing with burning of wastes as fuel and the regulation of recycle-reuse activities. The primary statutory or legislative concern is with the change of the word "hazardous waste" to "substances identified or listed under section 3001 of RCRA."

The real underlying issue is the definition of hazardous waste and the definition of solid waste which precedes it, and the proper scope of the statute and regulatory program. RCRA must be clarified in this regard. RCRA must be modified in order to close loopholes and catch the so-called bad actors.

However, this process needs reflection, consideration, and a full hearing on the issues. We are concerned that this has not happened as of yet.

These issues are very complex. EPA has been grappling with the issue of the program's scope since the 1976 enactment of RCRA, and more intensively over the last 1½ years in the context of litigation negotiations over the RCRA program. These negotiations may not have been the most efficient way to address this issue, but they are indicative of the problems with the program's scope.

We are concerned that the proposed amendment in this reauthorization bill will not accomplish the results of clarifying and tightening the proper scope of RCRA. The committee report is contradictory and confusing. It interchanges the use of words, such as substance and waste, which are not the same. The statutory language does not always reflect committee discussions as represented in the report. The report even recognizes that the statutory language should be changed in this regard.

There are in the pulp and paper industry three categories of examples that I would like to discuss briefly that exemplify these concerns. The first and most important are the pulping liquors. Pulping liquors are acidic or caustic chemicals which are used to digest wood chips into pulp. The spent chemicals are removed from the product stream and generally are burned, to burn off the wood sugars, to recover the chemicals to be used again.

In some of these processes, such as the kraft process, the chemicals were never thrown away. However, other of the processes have been developed to eliminate Clean Water Act problems and to avoid putting these spent chemicals into the water as waste.

These materials are spent materials under RCRA. They are sometimes, but not always, corrosive. Section 11, and possibly section 6, of the reauthorization bill would nevertheless regulate these processes, which are integral parts of the manufacturing process. They would subject our recovery furnaces—of which there are 311 in the industry—to a duplicative permitting process under RCRA, even though they are already permitted under the Clean Air Act.

This would impose significant costs and delays with no environmental benefits, we believe. Furthermore, it would characterize these manufacturing facilities as hazardous waste management facilities which would raise tremendous problems in the public's mind with respect to siting. It would impose additional costs of operation and control and possible retrofitting—at least for monitoring purposes—pursuant to RCRA.

Another example involves turpentine, which is a valuable byproduct of the pulping process, is ignitable, and would be regulated under section 11 of the reauthorization bill. This is a valuable byproduct that has always been recovered for processing and use. It is not a new use for formerly discarded waste. It is not properly within RCRA.

A third example involves lab chemicals and their ordinary use in a laboratory. Section 11 would again regulate such routine activities as reuse of these chemicals, as well as filtering and recharging chemicals in the laboratory. This comprehensive regulatory program would apply to many discrete minor processes in a recognized or established laboratory.

If nothing else, these amendments, sections 6 and 11, would force EPA to expend considerable administrative resources going through the process of determining that the above examples do not need to be regulated. These resources could be better spent in addressing recognized real problems of hazardous wastes.

I, frankly, do not have all the answers to these complex problems. But either do we believe does this amendatory package. We do not believe H.R. 6307 will accomplish the purpose of clarifying and tightening RCRA. We do believe it will cause more uncertainty and more litigation.

H.R. 6307 will discourage legitimate recycling and reuse contrary to RCRA and to established national policy. It will not necessarily close the loopholes and catch the cheaters. It will add to the costs for responsible facilities.

A better approach would be to increase enforcement of existing provisions of the act and make broader use of section 7003 of RCRA, of the Superfund, and of the Clean Water Act statutory and regulatory programs that deal with these issues. To answer these questions, and to resolve these problems, we believe that an orderly, reasoned and balanced review process is necessary which we do not believe has yet occured.

Thank you very much. I would be happy to answer any questions that you have.

Mr. **Roe**. Thank you very much for your testimony.

The Chair defers to the gentleman from Arkansas.

Mr. **Hammerschmidt**. Thank you, Mr. Chairman.

Mr. Greenwald, as I understand your statement, you are suggesting that there could probably be a negative clean water consequence with some of those proposed RCRA changes, such as changing that term "waste" to "substances." Is that sort of the final conclusion? I am thinking particularly of your current practice of burning the so-called black liquor rather than discharging it.

Mr. **Greenwald**. I don't think because of this change that the spent chemicals would be put back into the water, because the Clean Water Act presently prohibits that. What it is, is an example of possibly contradictory legislative goals and regulatory programs, duplicative permitting programs between the Clean Water Act issues and RCRA issues, and issues that are possibly raised by other statutes, and more properly addressed under those statutes.

The ramifications of that change, which again seems to be pushed through as a minor technical changes, appear large. But, frankly, we haven't had the time yet to really study them and apply them to our industry and to the statutes and to determine what the full ramifications would be.

There could well be negative consequences for the Clean Water Act by that change.

Mr. **Hammerschmidt**. So you don't think that you need to broaden the solid waste legislation to deal with substance rather than waste?

Mr. **Greenwald**. Not that change, no.

Mr. **Hammerschmidt**. I think that is all the questions I have at the moment, Mr. Chairman.

Mr. **Roe**. The gentleman from Pennsylvania.

Mr. **Edgar**. Thank you, Mr. Chairman.

I just have one comment, Mr. Zimmerman. In your oral statement you made reference to the section 9 which dealt with the Groundwater Commission, and I think some of the recommendations are good ones. I think you have to realize that the actual legislation being attached to this particular bill came through the Resource Recovery Act, and the committee that has jurisdiction, and it deals with hazardous waste to a large degree because the jurisdiction of that committee—and we have just kind of gone through each of the 10 duties of the Commission and looked at areas where additional language could be added, very simple language, about other sources of contamination, and just different places where just minor changes in words could broaden the scope to include some of the concerns that you raise in your testimony.

So I appreciate your comments, and perhaps when we are looking at the membership question for our chairman, we can also look at just a few word changes here and there that might meet some of the concerns that you raised.

Mr. **Roe**. Like from "shall"; to "will"

Mr. **Edgar**. "Shall" to "will," just technical changes like that.

Mr. **Zimmerman**. We feel, Mr. Edgar, it is a much broader problem, and we would be happy to provide you some suggestions on ways that it could be broadened to expand the scope to what we think it needs to be if it is going to be done right.

Mr. **Edgar**. Just one cautionary word. That is because there is joint jurisdiction here, we don't want to get hung up in a hassle and not have the Commission become law. So as we work on this, we hope it can be done in an expeditious way. Thank you for your help.

Mr. **Roe**. The gentleman from Pennsylvania.

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. Greenwald, in your statement on page 4 you mention talking about the kraft process, then you mention other processes have been developed to avoid Clean Water Act problems and to avoid putting these spent chemicals into the water. Can you give us some examples of those processes, and what they have done in order to avoid putting them into water?

Mr. **Greenwald**. The processes are similar in nature, involving recovering the chemicals. For example, I believe the sulfite chemical process uses a different sort of chemical to digest wood chips. In the past, as I understand it, these spent chemicals were discharged into the water. Because of the Clean Water Act programs, a process was developed whereby those spent chemicals could be burned to burn off the wood sugars, recover the original chemicals, maybe recharge some of the chemicals involved, and then reuse the chemicals in the process.

Mr. **Clinger**. So that there is no disposition of the spent chemicals into the water under that process?

Mr. **Greenwald**. Right. It is not a treatment process. It is actually removing the chemicals from the discharge and reusing them, with both energy and materials recovery.

Mr. **Clinger**. Mr. Zimmerman, H.R. 6307 requires a study of the discharge of hazardous wastes in a publicly owned treatment works. This is clearly related to the pretreatment provision of the Clean Water Act. Would you give the committee your opinion on the need for such an investigation, and whether such an investigation of impacts of industrial waste on POTW's should be made through solid waste disposal legislation or through the Clean Water Act. I think perhaps you have already answered that in your testimony.

Mr. **Zimmerman**. To some extent I did, but I would like to elaborate in response to your question. I don't think it is necessary to do another study. This is a study that EPA has had done already on the issue in relationship to its pretreatment regulations that are in development now. It is a rather extensive study. CMA certainly has participated in that process.

We have our own set of comments on that study, and you can see that we are now approaching 4 inches of material on this subject under the Clean Water Act. We are not entirely satisfied with the study that has been made, but that, we feel, is a matter for resolution in the pretreatment context under the Clean Water Act.

It is certainly an adequately ventilated issue, and it is being looked at carefully. We are finding, EPA is finding, EPA's contractor which produced the first two volumes you have put up have been finding a much higher degree of toxic chemical substance removal by POTW treatment works than had originally been contemplated, and I think that was underscored by a House report a couple of years ago by the Oversight Committee on Clean Water Act legislation, and we are finding that the treatment works and conventional treatment that they perform, primary and secondary, in some cases tertiary, are handling the toxic discharges that are coming into their systems from their various customers, the indirect discharges.

So we think that that study is very adequately examining the handling of these problems, and we don't feel that it is necessary to divert the agency's resources and those of the POTW's to study that issue again under a different statute.

Mr. **Clinger**. Would those studies include those substances that have been exempted under—as I understand the substances that we are talking about are those that were exempted under RCRA before?

Mr. **Zimmerman**. They were exempted in the regulations, these types of discharges are exempted in the regulations, but the list of substances or hazardous wastes is fairly coextensive with the list under section 307 of the Clean Water Act, of toxic materials, toxic pollutants, and the definition of pollutant under the Clean Water Act is about as expansive as anything you could imagine. I am sure you are quite familiar with that.

The studies that have been done in connection with the pretreatment program, examine all pollutants, toxic as well as nontoxic pollutants, conventional as well as nonconventional, and essentially the prohibitions in the Clean Water Act are all-encompassing on this point, because they prohibit the discharge of any pollutant to the POTW that would interfere with its operations or pass through the treatment facilities untreated, and discharge into the navigable waters, in violation of the POTW's discharge permit, so we feel it is being adequately covered in terms of both the scope of the substances under examination and in terms of the effort that is being put forward in pretreatment.

Mr. **Clinger**. You have indicated that you felt that the scope of the proposed Groundwater Commission was too narrow, that it was focused too heavily on hazardous waste impacts on ground water. Would you support the establishment of such a commission if it were to be broadened as you have suggested in your testimony to include nonpoint source pollutants?

In other words, just to make it a much broader study, would you tend to feel that the Commission concept was good if the scope would be broadened?

Mr. **Zimmerman**. We think the concept is good, Mr. Congressman. We feel that there ought to be an expansion of the technical expertise of the commissioners directly. Certainly the Commission would have a professional staff. We feel it is important that the members of the Commission be drawn from as broad a spectrum as possible, and that they have a good deal of technical expertise.

This is a very complex matter. Ground water has been studied for a long time, but we feel it has not been understood, and it is a matter of trying to bring some understanding to it now. It is a resource that we need to manage, and there are the scope of the nonpoint sources in particular that affect ground water is immense, and perhaps although we are not sure about this, those are more of a problem when you combine nonpoint sources with individual septic systems, septic tanks, far more of a problem than hazardous waste disposal problems. Certainly those are a problem, and they need to be studied as well. This is a complex problem.

Mr. Roe. Would the gentleman yield?

Mr. Clinger. I will be happy to yield.

Mr. Roe. It seems to me that in the earlier testimony we start to bring that into sharp focus, as you are suggesting. It seems to me certainly the Geodetic Survey, who are the granddaddies, if you like, of all of the ground water, ought to be an integral part of this issue.

Mr. Zimmerman. I can't agree with you more.

Mr. Roe. The Corps of Engineers is called upon continuously vis-a-vis the point of all water resource development, so their input and expertise alone could be enormously helpful to that commission. Is that a reasonable statement to make?

Mr. Zimmerman. Absolutely, Mr. Roe. The technical expertise in these Federal agencies is very good on a lot of these issues, and USGA has led the charge, so to speak, in studying and examining this issue. But I think, as your prior witness indicated, it is complex. He cannot answer all the questions. He can't tell you specifically how each chemical will react in the ground water. We are talking about complex geochemistry that varies from ground water resource to resource.

I think the point that I would like to emphasize that he made, is that this is a manageable resource, and it is a resource that is manageable. I am very optimistic, as he is, that we are not too late in this regard, but that we ought to look at it as a multiple-use resource.

Mr. Roe. If the gentleman would yield further, I think what the gentleman from Pennsylvania is attempting to and is developing, is that you manifested your concern with such a Commission study, and we don't want to chew the cabbage twice. God knows we agree with that 50 times over, but we do feel that there is a void. There is nobody in charge of the store, and therefore you have conflicting situations, as you have—I don't mean it unkindly but you have enunciated that vis-a-vis the situation in the first place related to the amendments.

I think what the thrust would be as far as this area is concerned would be to have some kind of umbrella to start looking over this whole thing because people are being blamed for something that they are not responsible for. Municipalities may be put in that area. I think what the gentleman from Pennsylvania is developing, if we expand the expertise of the makeup of the Commission, and we expand in a broader overall view of the charge of the Commission, do you look more kindly toward that kind of a thrust?

Mr. Zimmerman. Absolutely, Mr. Roe. We can support that kind of a commission and we would be happy to participate in it and indeed we would want to participate in it.

Mr. Clinger. I think you have made a very good point about the fact that the Commission, as presently contemplated, does not really cover all of the sources of pollution that may go on within the aquifers. We have certainly discovered that in this committee before with regard to surface waters, that there is a tremendous amount of non-point-source pollution in the surface waters which we really don't have a handle on at this point, and clearly if we are going to be addressing the overall problem of the aquifers, we should be looking at all sources of pollutants that are going into those aquifers, and not limit it to one source.

This committee, I think it is obvious, is concentrating on sections 4 and 9 of H.R. 6307, over which the committee obviously has jurisdiction. In your opinion are there other provisions of the legislation which may have implications for Clean Water Act activities under the purview of the Public Works Committee?

Mr. ZIMMERMAN. Yes, sir; as I mentioned, section 10 I believe has ramifications for Clean Water Act. We view the precedent-setting nature of an attempt to create a Federal common law remedy here under RCRA to be one that could be extended over. It would be more difficult under Clean Water, in view of the Supreme Court opinion, but that could be legislated over, I suppose.

I think, though, that there are other issues related to the difference between hazardous waste and substance that may have implications for water discharges. If you are trading, you obviously have tradeoffs here of solid waste-handling matters versus discharges into waters, as I think has been emphasized by the Paper Institute people, and those tradeoffs are involved in each of these issues.

I think that is one of the reasons you see so many committees with an active interest and so many Federal agencies with an active interest in clean water legislation. It may be peripheral to their main charge, but they have some interest in the issue because they recognize the tradeoffs involved. I can be more specific if you would like me to in a written submission about the specific points. We do have a position on each of the sections that are contained in this bill.

Mr. CLINGER. We would appreciate having that information. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. ROE. Are there any further questions? The gentleman from California.

Mr. CLAUSEN. Yes, I am sorry that I was late for the hearing process and the questioning.

Mr. ROE. You are always welcome.

Mr. CLAUSEN. I am really quite impressed with the line of questioning that has been thus far developed. There are a couple of areas that I would like to have a broader perspective on from you, one of which relates to the whole concept of implementation assistance. Are you satisfied with the provisions as being genuinely workable? Because we have done an awful lot of authorizing in these committees, which sometimes tends to fall short when it comes to the whole question of implementation. I believe that the success or failure of the clean water program does in fact lie in the success or failure of the implementation.

Now, on the basis of your working experience—and I would go to you, Mr. Greenwald, and Mr. Zimmerman, for just a candid assessment of whether or not the way our laws have been structured has an inhibiting influence, or in fact whether we really are able to attack the problem and address these problems in terms of genuine implementation of the provisions of the legislation.

Mr. **Zimmerman**. Mr. Clausen, I would like to address my answer in two parts, one to the Clean Water Act, and the other to the Resource Conservation and Recovery Act. We are considering today, of course, H.R. 6307 on RCRA.

We think that several provisions in that legislation would potentially delay the implementation process under RCRA, because they would introduce a new level of confusion, if you will, a new set of questions that would have to be addressed and answered, and would in my judgment put a hold or a stop on some of the implementation programs that are under way.

EPA has been working diligently under extreme pressures from virtually all interested parties to implement the Resource Conservation and Recovery Act. It is a very complex matter. It has implications on clean air, on clean water, other programs, and it is quite an effort that they are putting forward.

If we have to stop now, to decide what the meaning of the term "sustances listed under 3001" is vis-a-vis the term "hazardous waste," which is a term clearly understood by everyone in RCRA, that is going to put some delays in the process.

The small generator program, while we don't take any position one way or the other about whether there should be such a program, we recognize that that is going to impose some fairly substantial burdens on EPA. As we understand it, that would be approximately 150,000 additional owners or operators that they would have to develop a regulatory program for.

As to clean water, the implications of this bill, particularly in the pretreatment area, it would seem to me would impose similar sorts of, "Wait, let's stop and take a look at this and reassess what we are doing" problems with implementation of the pretreatment program.

That also is a complex program, and it has gone down a very tortuous path toward implementation, with a lot of questions needing to be answered: upgrading of POTW facilities, installation of some of the basic POTW facilities that have yet to be constructed, as you are well aware, from the legislation last year, that is a process that is ongoing.

If we have to stop and reexamine the basic concepts and thrusts of the pretreatment program, as would affect those facilities, and the discharges to those facilities, then we have introduced another element of delay in the implementation process. Our point is we want to get on with this. We want full implementation of the pretreatment program just as soon as possible.

Mr. **Clausen**. You know it might be genuinely helpful for a little follow-on input from you. All we can deal with is the legislation that is before us on the basis of the sequential referral that has taken place here, and I think that most of us on this committee in particular, that have had the experience with the clean water program, are genuinely sensitive to the problems of implementation.

There are GAO reports filled with those problems, that this committee ordered. I wonder if you could critique this legislation, and see if legislatively there are some revisions that might be made in the legislation itself, that would minimize the delay factor.

There is a tendency to have a major effort in the direction of developing a law, legislative history, and then assume that that is going to get the job done, when in reality it has the potential of adding to delays, and not achieving for either the regulated or the regulators the objectives of implementation that I think everyone has a common desire to try to do, notwithstanding the fact that we have got some problem areas associated with certain personalities and so forth, but is there a way that you could come up with a critique of this.

Mr. ROE. Would the gentleman yield on that point, please?

Mr. CLAUSEN. Yes.

Mr. ROE. Before you came in, Don, we mentioned that we are going to be starting our hearings relatively soon on the second phase of the Clean Water Act.

Mr. CLAUSEN. OK.

Mr. ROE. In which case we will be calling you back at that point for indepth hearings on that issue.

Mr. CLAUSEN. The implementations.

Mr. ROE. We would be happy to testify on that point. As far as the bill before us today, Mr. Chairman, Mr. Clausen, I would be happy to provide you with such an analysis, work with the committee on providing you with those kinds of suggestions on a very timely basis.

Mr. CLAUSEN. I think in order for us to be responsible, and I think to a degree responsive to the problems there, it would be helpful, whether we use it or we don't use it, I think there is this interrelationship, Mr. Chairman, between this legislation as well as the possible legislation that is pending on the Clean Water.

Mr. ROE. Would the gentleman yield again?

Mr. CLAUSEN. Yes.

Mr. ROE. It seems to me that if we properly structure the study commission—we have the proper expertise involved in that overview, because there is a definite interrelationship with this legislation and what we are doing under Clean Water. It may provide us with a vehicle to be able to bring some kind of—I want to be kind—continuity to the approach.

Mr. ZIMMERMAN. You are referring now to the Groundwater Commission?

Mr. ROE. Specifically to the ground water issue at this juncture, because it seems to me that such a study, if it is done properly, could very readily point up the dichotomies that you are speaking to and that the gentleman from California is speaking to at this point.

Mr. CLAUSEN. What is the time element?

Mr. ROE. 1986 is what they are speaking to, taking into consideration we have got the 1983 situation of appropriations. Then you have got a timeframe, and then we mentioned, Don, with the constraints we have this year, and our necessity to pass at least a 1-year reauthorization. That is giving you a chance to get into what we have to get into, because there is a question whether we can finish that all in 1 year's time.

And the complexities, we are most aware, this committee is particularly aware of the inordinate complexities that are involved in the second phase of this Clean Water Act so far as pretreatment is concerned. So that it seems to me that albeit that it is a year or two involved before we can get the advantage of that, by the same token at least is there some reason not to be bucking heads on the issue?

Mr. **Clausen**. Be that as it may, I would like to have you critique this specific piece of legislation. In fact, if you had any suggestions for revision, and that we could determine whether or not those suggestions would be applicable to and ought to be incorporated into at least our committee's recommendations on the legislation, we can decide that, and it may very well have one way of application to the Clean Water. But I think it would be a good exercise.

Mr. **Zimmerman**. I would like to underscore one thing if I might. It is my feeling that the 4 year timeframe that this Commission report is premised on now is probably appropriate. I don't think that we can stop at all and wait for the results of that report. It is important to build in to the regulations that are coming along now.

Mr. **Roe**. In view of our terrible constraint on time this morning, may I as chairman of this committee respectfully answer that on your time. This committee has absolutely no intention of any dragging of feet or whatever. In fact of the matter, EPA testified to a concern that if such a commission were established that we may look for some kind of delay. The impact upon industry is extraordinary in this country and we are aware of that.

Mr. **Clausen**. Well, I need not remind the chairman and other members of this committee that oftentimes the creation of a commission is perceived as a delay vehicle.

Second, you will recall that there was a very substantial water quality commission that was established and an indepth study and very little of the mid-course studies that were suggested as a result of that were actually done legislatively.

So I think we have to be mindful of the experience.

Mr. **Zimmerman**. I would like to emphasize the committee is not endorsing or seeking any delay by supporting the concept of this program.

Mr. **Clausen**. Do I understand basically from your comment that your committee believes strongly in the pretreatment emphasis? Is that what you are saying?

Mr. **Zimmerman**. As far as that provision of this bill is concerned, we believe strongly that the pretreatment program under the Clean Water Act should go forward. We think there are some amendments some midcourse corrections and fine-tuning that may streamline the ability to implement that more rapidly.

There are difficulties with the program now but we will save further discussion of that at your pleasure.

Mr. **Clausen**. Maybe we are taking more time on that this morning, but Mr. Greenwald, at some point I would like to have your own personal assessment of a workable implementation strategy as far as the pretreatment program is concerned.

And I could ask for a response now but I would like to have you give some serious thought to that and mainly, if you think we ought to be doing something with this legislation or not, I want to discuss this with you personally a little bit further but also to give some thought to giving the committee the benefit of our own working experience as it relates to pretreatment implementation strategy and what are the factors that will make it work because I think we all have the same goals.

Mr. **Greenwald**. I would be very happy to supply that at a later date.

If I may address the question you raised earlier, the implementation problem, I second what Mr. Zimmerman has said and I believe that it is important to focus on administrative resources and industry resources. If you are broadening the RCRA program and getting involved in other media, you are going to divert resources from addressing the recognized, existing hazardous waste problems.

To the extent that this bill creates more ambiguities, for example by the change from hazardous waste to substances, you are going to divert again resources in an attempt to try to understand what is meant. Then, frankly, there will be litigation on one side or the other, saying that the result is either too narrow or too broad, which will further delay implementation of this program.

Earlier, I was asked a question on the adverse consequences with respect to the Clean Water Act program from that change and I perhaps took a too narrow, legalistic view of the question. I think that the delays that could be caused by the use of that term, the increased regulation of recycle, reuse activities could have adverse effects on Clean Water Act programs, both from the diversion of industrial and administrative resources and also from the discouragement of recycling and reuse.

To the extent that you start putting restrictions on recycle—reuse, on what you can do with recycle—reuse, some people will instead put their wastes in the water or put them in the ground, and you are going to have those adverse effects on Clean Water Act programs.

Mr. **Clausen**. Well, I think you have really put your finger on an objective that we should all share and that's the utilization of the administration's resources, hopefully with a constructive and objective attitude rather than one that will be an inhibiting influence on achieving the goal that I have been alluding to.

I think that at some point as a part of what we are talking about, I need to have a follow-on on what you have in mind as to what resources we ought to be using and what resources you can provide and rather than a "them and us" kind of thing what we can do to work together. Would you work with us on that?

Mr. **Greenwald**. I would love to. Certainly.

Mr. **Roe**. Are there further questions.

The gentlemen from Illinois.

Mr. **Fary**. Thank you, Mr. Chairman.

Mr. Zimmerman, Mr. Clinger might have asked the same question but I am not sure I understand your reply. In your testimony you mentioned that all ten duties of the Commission require studying of the impact of hazardous waste management practices on ground water contamination. I appreciate your point regarding the effect of other nonpoint sources of potential ground water pollution being important in any national ground water study.

Is there any way we could expand the 10 existing duties to include the study of the other nonpoint sources that you mentioned?

Mr. **Zimmerman**. Yes, sir, Mr. Congressman, I think there is. And as I indicated to Mr. Clinger, I believe we will be happy to provide some suggestions in that area specifically as to how to expand this language to address some that the Commission could address and examine nonpoint issues. Those are the very important issues in our minds.

Mr. **Fary**. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Roe**. Thank you very much. You realize that we need to move with dispatch so we look for that tomorrow.

If there are no further questions, we thank you for your very valued testimony and we appreciate your being with us this morning. So we will look for that tomorrow.

Mr. **Greenwald**. Thank you.

[Subsequent to the hearing, the following was received for the record from Mr. Greenwald:]

AMERICAN PAPER INSTITUTE

NATIONAL FOREST PRODUCTS ASSOCIATION

API/NFPA Environmental and Health Program
1619 Massachusetts Ave., N.W., Wash., D.C. 20036

Michael C. Farrar
Vice President
202-797-5784

June 7, 1982

The Honorable Robert A. Roe
Chairman, Subcommittee on Water Resources
Public Works and Transportation Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Roe:

We appreciated the opportunity to testify before the Subcommittee on Water Resources on H.R. 6307 on May 26. At the hearing, the API/NFPA witness, Daniel J. Greenwald, III, was asked to supplement his remarks in three areas: (1) the forest industry's view on the proposal for a national groundwater commission; (2) API/NFPA's position on the proposed pretreatment study included in H.R. 6307; and (3) a section-by-section description of the problems H.R. 6307 may pose for implementation of RCRA programs and Clean Water Act programs.

An analysis of each of the above three issues is attached. Our revised and extended remarks will be sent to the Subcommittee shortly under separate cover. Please contact me if any additional information is required.

Once again, we applaud the Subcommittee for the careful review given to H.R. 6307 during the May 26 hearings.

Sincerely,

MCF/jb
Enclosures

API/NFPA POSITION ON PROPOSAL FOR A NATIONAL GROUNDWATER COMMISSION

Section 9 of H.R. 6307 proposes a national commission to study the impact of solid and hazardous waste disposal on groundwater quality. API/NFPA do not object to the proposition of a groundwater study commission. However, we do believe that the commission, as proposed in H.R. 6307, should be restructured in several important respects.

First, the commission should be charged with the responsibility to assess all significant sources of groundwater impairment, including discharges of pollutants regulated under the Clean Water Act, as well as nonpoint sources of pollution. Only such a comprehensive analysis will set the basis for future Congressional consideration of the groundwater issues.

Second, the commission should evaluate problems associated with both groundwater quality and quantity. In many areas of the country, problems of groundwater supply are significantly more troublesome than groundwater quality concerns.

Third, the commission should review the groundwater problem in the context of the proper role of various levels of government in dealing with the issue. The commission should provide recommendations to Congress concerning the distribution of responsibility among local, state and the federal governments. To facilitate this end, the composition of the commission should be expanded to include at least one representative of local government.

Finally, to the extent that there is a federal role in dealing with groundwater control, the commission should evaluate the relative merits of existing statutes (e.g., RCRA, CWA) for dealing with the problem. The commission should also assess whether separate legislation is needed.

API/NFPA POSITION ON PROPOSAL FOR A STUDY OF HAZARDOUS WASTE DISCHARGES TO POTW's

Section 4 of H.R. 6307, Hazardous Waste Mixed With Domestic Sewage, requires a report from EPA on whether hazardous wastes that are exempt from RCRA Subtitle C control because of their mixture with domestic sewage and their treatment in POTW's are being effectively controlled under other environmental laws (i.e., the Clean Water Act).

API/NFPA do not object to the approach of Section 4, because it properly orders the compilation of hard data before the promulgation of regulations, in order to determine if there is a real environmental problem. However, this study of hazardous waste discharges to POTW's is unnecessary and redundant, because EPA has already completed, in conjunction with the pretreatment requirements of the CWA, several studies that provide the necessary information.

For example, a study by the Agency published in December 1981 already addresses the impacts of industrial wastes, including hazardous wastes, on POTW's. In addition, from 1978 to 1980, EPA conducted a study of 40 POTW's to determine the impacts of industrial wastes. The Agency has also collected and analyzed thousands of industrial wastewater samples in conjunction with the development of effluent limitations guidelines for 34 industry categories. To require an additional study at this time, especially one pursuant to a different statute, would only add further costs, divert limited Agency resources, and cause confusion and additional delay in the pretreatment program, which is finally nearing implementation.

The expected implementation of this pretreatment program is another factor weighing against the RCRA study. Sections 307 and 402 of the CWA require the development of local pretreatment programs to control industrial discharges to POTW's. The Agency has been slow to implement this program because of the undue complexity of the initial regulatory program and the lack of a good data base at its inception. However, the Agency has recognized these problems and is now reviewing the regulatory program in order to make it more effective. The Agency is also streamlining its permitting policy in anticipation of its second round of NPDES industrial permits, and these permits are expected to include toxic limits.

The third factor weighing against the Section 4 RCRA study is that the Administration has submitted proposed amendments to the CWA, including two provisions that address the concerns expressed in the Committee report on these RCRA amendments. One provision, by allowing discretionary issuance of categorical standards and local flexibility, will enable government resources on all levels to be targeted on the most critical problems in pretreatment. The other provision increases the penalties for CWA violations, eliminating the present inbalance with RCRA and thereby further discouraging willful violations of the CWA with respect to hazardous waste.

Therefore, API/NFPA recommend striking Section 4 of H.R. 6307 with the clear understanding that the issues of hazardous waste mixed with domestic sewage will be thoroughly reviewed during upcoming House Public Works and Transportation Committee hearings on the CWA amendments.

API/NFPA STATMENT ON IMPLEMENTATION OF RCRA AND CWA PROGRAMS

The substantive amendments to RCRA proposed in H.R. 6307 would have a direct, adverse impact on implementation of RCRA programs and would be likely to have an indirect adverse impact on implementation and achievement of CWA programs and objectives. The adverse impacts stem from three consequences of these amendments: (1) discouragement of recycle/re-use processes that could prevent creation of wastes that would require disposal on land or in the water; (2) creation of confusion and legitimate dispute as to the intended scope of the RCRA program; and (3) diversion of administrative and industry resources from addressing the recognized, widespread and significant environmental problems to studying and trying to regulate possibly non-existent, isolated and insignificant "problems."

Section 3 of H.R. 6307 directs the Agency to promulgate more restrictive regulations for small quantity generator wastes, which currently are only partially regulated under RCRA. Essentially, the amendment would lower the small quantity generator level from 1000 kg per month to 100 kg per month. API/NFPA believe that this change would create tremendous administrative and industry costs with minimal environmental benefits. The EPA rulemaking record demonstrates that such a lowering would bring an additional 130,000 generators into the RCRA system, but the additional hazardous wastes brought into the system amount to less than 1% of the hazardous waste generated in the United States.*

Moreover, analysis of the damage incidents that have been offered in support of this change indicates that Section 3 would not eliminate the "problem." API/NFPA member companies have found that landfill operators demand certification of the nature of a generator's wastes, and often the non-RCRA facilities refuse to accept hazardous wastes from a small quantity generator. These small quantity generator wastes are thus actually being sent to RCRA hazardous waste facilities, or are being knowingly accepted by non-RCRA facilities, usually pursuant to state review or authorization.

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* 45 Fed. Reg. 33102-03 (May 19, 1980). Eliminating the small quantity generator provision entirely would bring in almost 700,000 additional generators with less than a 1% increase in regulated hazardous waste.

The damage incidents have been caused primarily by generators who have misstated to the waste management facilities the hazardous nature of their wastes, and these generators are not likely to change their practices in response to this statutory change. The Section 3 amendment would thus impose additional federal regulatory burdens on the responsible companies and substantially greater administrative burdens on the Agency, without significantly changing the disposition of small quantity generator hazardous waste and without doing anything to catch the actual problem-causers, the "cheaters."

Section 4 of H.R. 6307 requires the study under RCRA of the effects of placing hazardous wastes in sewage systems for treatment at POTW's. Again, H.R. 6307 would require the expenditure of limited Agency resources to study the regulatory aspects of an environmental problem, when all indications are that the problem is not caused by regulations. The problem is caused by violators of the CWA. To the extent that there may be an environmental problem from the RCRA regulations, it will be discovered and resolved through CWA studies and programs that are already existing or are in the final stages of implementation. To the extent that there remain gaps in the CWA programs for industrial discharges to POTW's, the proper vehicle for addressing them is the upcoming review of the CWA amendments.

Sections 6 and 11 of H.R. 6307 would be likely to have the greatest adverse impact on implementation of RCRA and CWA programs and on achievement of RCRA and CWA objectives. Section 6 requires regulation of all "substances identified or listed under Section 3001" of RCRA that are burned for energy recovery. Section 11 requires regulation of all use, re-use, recycling or reclamation of "substances identified or listed under Section 3001" of RCRA.

The first problem would be trying to determine what materials are included in the phrase "substances identified or listed under Section 3001" of RCRA. This phrase is undefined and extremely ambiguous, although it appears to be broader than the coverage of the recent Superfund legislation. It apparently would apply the RCRA hazardous waste program to materials that no one considers to be, or has ever considered to be, wastes or even to be similar to wastes. Therefore, considerable Agency resources would be expended trying to define the phrase and to apply hazardous waste regulations to non-waste materials. Then, significantly more resources undoubtedly would be spent by the Agency, industry and public interest groups litigating the issue of what the phrase means. The lack of a clear legislative history on this issue, at least so far, would compound the difficulties of trying to understand the phrase and of trying to justify to a court any regulations under the phrase.

The second problem that would be caused by Sections 6 and 11 is the adverse impact, on implementation of CWA and RCRA programs, of the resulting substantive regulations on recycle/re-use and energy recovery. Certain recycle/re-use and energy recovery processes should be regulated in some respects under RCRA, and the Agency is currently developing selective regulations to do just that. Sections 6 and 11, though, require regulation of an ambiguous, but extremely overbroad, field of materials and processes. They would extend the regulatory program for hazardous waste management well into many ordinary and established manufacturing and production processes. Further, these sections would require RCRA regulation and RCRA permitting of facilities to address environmental effects that are already adequately regulated under Clean Air Act programs and Clean Water Act programs.

The types of processes that illogically could be regulated under both Sections 6 and 11 are exemplified by the recovery furnaces in the paper industry. In many different pulpmaking processes, chemicals are used to digest wood chips, and after the digesting stage, the spent chemicals are removed from the product stream.* These spent chemicals are then burned (in recovery furnaces that are regulated under the Clean Air Act) to recover the chemicals for re-use in digesting wood chips and to recover significant quantities of energy.* Some of these pulpmaking processes, such as the Kraft process, were developed with the recovery stage as an original and integral part of the pulpmaking process. Indeed, the Kraft process is not economically viable without recovery of both the chemicals and the energy. Other of these processes, though, such as the sulfite liquor process, were originally developed without re-use of chemicals; the spent chemicals were simply discharged into nearby streams, rivers and ponds. Because of the CWA programs, material and energy recovery stages were developed for these processes to eliminate the discharge.

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* Not all of the spent chemicals are hazardous. Some, though, may be corrosive, depending on the process and the particular system. The quantities are large, approximately 1,000,000 gallons per day for a typical 500 ton/day Kraft pulp mill.

H.R. 6307 would now regulate these recovery stages of established manufacturing processes. Although the Kraft and sulfite liquor processes with material and energy recovery will still be used in pulpmaking, the recovery stages would be unnecessarily burdened with additional regulatory costs under RCRA. A more troubling concern in the longer range, though, is that some new recovery processes that could reduce generation and discharge of wastes to the water or the land may not be developed by industry. The added costs of RCRA regulation may make such a recovery process uneconomic or simply undesirable because of its identification as a hazardous waste management process or facility. The generator may find it easier merely to ship the wastes to a RCRA disposal facility.

Section 7(b) of H.R. 6307 would also unnecessarily divert Agency and industry resources by forcing the Agency to process permits for all expansions of existing facilities of more than 10% of capacity. Under the existing regulations, EPA must be notified of any expansion, and if EPA considers the expansion to be material with respect to the environmental risks, it can call and process the facility's permit. Conversely, if the expansion is not material, such as the expansion of a drum storage area at a large manufacturing facility from 50 to 75 drums, the Agency need not allocate its resources to the facility at that time. Under the amendment, though, the Agency is required to process the permits for all expansions over 10% of existing capacity. Thus, it must either divert administrative resources from higher permitting priorities or prevent companies from undertaking necessary expansions of regulated hazardous waste management facilities.

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* Wood sugars and other wood constituents are burned off.

Finally, Section 10 of H.R. 6307 legislatively overturns a recent Supreme Court decision under the Clean Water Act (City of Milwaukee v. Illinois, 451 U.S. 304 (1981)). This change would impede implementation of RCRA and CWA programs by allowing judicial interference with permitting and other regulatory decisions without requiring any judicial consideration of the RCRA and CWA statutes, programs or goals. A private party could bring suit in federal court to change the conditions of a RCRA permit based solely on alleged adverse effects on the individual. In structuring relief, the court would not necessarily be restrained by Clean Water Act, Clean Air Act or even RCRA considerations or objectives, nor would it be restrained by the permitting agency's record or reasoning. The private party need not even have appeared before the agency or made his concerns known.

The full ramifications of this amendment are complex and unclear, and they have yet to be illuminated by the legislative history. Because of this complexity and uncertainty, in 1981 a parallel provision was dropped by the Public Works and Transportation Committee from the Senate Clean Water Act amendments until the ramifications could be fully considered and understood. At the time, Chairman Roe and Senator Stafford promised hearings on the change in 1982. API/NFPA believe that this promised, orderly hearing procedure should be followed for such a potentially far-reaching change, as opposed to the hurried, "technical amendment" procedure that has been used for these RCRA amendments.

In conclusion, API/NFPA believe that the RCRA amendments in H.R. 6307 would have an adverse impact on both implementation of RCRA and CWA programs and achievement of RCRA and CWA objectives. First, they would discourage development and use of recycle/re-use and energy recovery processes that could prevent the generation of hazardous wastes that would require disposal on the land or in the water. Second, they would create confusion and controversy over the intended scope of the RCRA program. Third, they would divert administrative and industry resources from high priority environmental problems to low priority and non-existent "problems." API/NFPA believe that these so-called technical amendments should not be rushed through Congress so as to compromise the objectives of RCRA and the Clean Water Act.

[Subsequent to the hearing, the following was received from Mr. Zimmerman:]

CMA

CHEMICAL MANUFACTURERS ASSOCIATION

May 28, 1982

The Honorable Robert Roe
Chairman
Subcommittee on Water Resources
Committee on Public Works and
  Transportation
B-376 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Roe:

This is in response to questions for additional information requested at the May 26 Subcommittee hearing on H.R. 6307, the RCRA Reauthorization Act of 1982. Also, we are submitting for the record on the hearing a written statement by Mr. Zimmerman. At the hearing, several sections of the bill were addressed which are of importance to the chemical industry and we have listed recommended changes to these sections. They are:

1) As stated in our testimony, we feel that Section 4 is redundant with a study currently being conducted under the Clean Water Act. Thus, section 4 of H.R. 6307 should be deleted.

2) In sections 6 and 11 of H.R. 6307, the phrase "substance identified or listed under section 3001" is used in a way that is extremely broad and could be interpreted to cover substances and practices which are now regulated under the Clean Water Act. We would recommend the substitution of the original phrase, "hazardous waste" which is well defined under RCRA, for the phrase which presently appears in H.R. 6307 "substance identified or listed under section 3001".

3) As stated in our written statement, section 7(a) broadly and vaguely requires EPA to address "releases" in its RCRA permitting program. "Release" is a Superfund - not RCRA - term, and it could be construed to require regulation of practices for which EPA currently does not have jurisdiction under RCRA. By broadening RCRA into concepts such as "releases", this bill may impinge upon Clean Water Act programs regulating permitted discharges to waters of the United States.

Formerly Manufacturing Chemists Association—Serving the Chemical Industry Since 1872
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4) Section 9 (a) ESTABLISHMENT -- There is established a commission to be known as the National Groundwater Commission (hereinafter in this section referred to as the "Commission").

(b) DUTIES OF COMMISSION - The duties of the Commission are to:

(1) Assess the scope and nature of the relationship between groundwater contamination from all sources of hazardous waste and solid waste (including septic systems, nonpoint sources, agricultural practices and road salting activities) and groundwater overdrafting problems in order to develop projections of available, usable groundwater in future years on a nationwide basis.

(2) Assess management methods used by State and Federal agencies to control and monitor groundwater used for drinking and other purposes and the adequacy of existing standards for groundwater quality under State and Federal law.

(3) Assess the need for comprehensive policies on a state-by-state basis to manage groundwater resources for multiple uses and prevent impairment of such uses by contamination from solid wastes, hazardous waste and other contaminants.

(4) Assess the adequacy of the present understanding of groundwater recharge zones and sole source aquifers and assess the adequacy of knowledge regarding the interrelationship of designated aquifers and recharge zones.

(5) Assess the role of land-use patterns and underground injection practices as these relate to hydrogeologic structure and related groundwater management practices.

(6) Assess methods for remedial control and cleanup of groundwater contamination which interferes with existing and projected groundwater uses as well as the costs and benefits of such control and cleanup, including the option of providing substitute water supplies.

(7) Assess the quality and quantity of expertise within the federal agencies and institutions that can be made available to states desiring technical assistance in de-

veloping or implementing groundwater management systems at the state level.

(8) Assess and compare Federal authority and mechanisms and the authority and mechanisms of the States in groundwater management.

(9) Investigate policies and actions taken by foreign governments to manage groundwater resources.

(10) Assess the use and effectiveness of existing interstate compacts to address groundwater management.

(11) Analyze existing legal rights and remedies regarding groundwater.

(c) MEMBERSHIP - (1) The Commission shall be composed of thirteen (13) members as follows:

(A) 2 appointed by the Speaker of the United States House of Representatives from among the members of the House of Representatives;

(B) 2 appointed by the Majority Leader of the United States Senate from among the members of the United States Senate;

(C) 8 appointed by the President as follows:

(i) 2 from among a list of nominations submitted to the President by the National Governors Association;

(ii) 2 from among a list of nominations submitted to the President by the National Academy of Sciences;

(iii) 2 from among a list of nominations submitted to the President by groups, organizations, or associations of industries the activities of which may affect groundwater; and

(iv) 2 from among a list of nominations submitted to the President from groups, organizations, or associations of citizens which are representative of persons concerned with pollution and environmental issues and which have participated, at the State or Federal level, in studies, administrative proceedings, or litigation (or any combination thereof) relating to groundwater; and

(D) the Director of the Office of Technology Assessment.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Appointments may be made under this subsection without regard to section 5311(b) of title 5, United States Code. Not more than 1 of the 2 members appointed under subparagraph (A) and not more than 1 of the 2 members appointed under subparagraph (B) may be of the same political party. No member appointed under paragraph (C) may be an officer or employee of the Federal Government.

5) Section 10 may have sweeping legal consequences under RCRA, as well as establish a precedent which could affect Congressional deliberations on Federal laws, such as the Clean Water Act which is due for reauthorization this year. Because this section could impose additional, undefined federal liabilities, we recommend deletion of section 10 from H.R. 6307.

Thank you for considering these very important issues. If you have any questions, please call me at 887-1124.

Sincerely yours,

Timothy F. Burns

Timothy F. Burns

TFB:kml

cc: Mr. Errol Tyler
✓Mr. Joseph Italiano
Mr. John Doyle
Mr. Craig DeRemer

ADDITIONS TO THE RECORD

ENVIRONMENTAL DEFENSE FUND

May 27, 1982

Representative Robert A. Roe, Chairman
House Subcommittee on Water Resources
Room 2165
Rayburn HOB
Washington, DC 20515

Dear Representative Roe:

The Environmental Defense Fund (EDF) wishes to express its support for Section 4 of the Resource Conservation and Recovery Act (RCRA) Reauthorization of 1982. Section 4 requires the Administrator of EPA to study the extent to which the pretreatment program under the Clean Water Act and other pollution control programs adequately cover the discharge of hazardous waste into publicly-owned treatment works (POTWs).

As you are already aware, EPA has exempted all hazardous waste which passes through a sewer system containing domestic sewage leading to a POTW from regulation. See 40 CFR §261.4(a). The rationale for this exemption is not that such wastes are adequately regulated already, but rather the rationale is the Agency's interpretation of Congressional intent regarding the terms "solid waste" and "domestic sewage" in the Solid Waste Disposal Act of 1965. Indeed, at the time the Agency promulgated the exemption, it stated: "The exclusion of domestic sewage and mixtures that pass through sewer systems to POTW's is based on Congressional intent, not an Agency determination about the relative health and environmental risks presented by such waste streams. The Agency acknowledges that some mixtures of domestic sewage with other wastes may present environmental risks and that some non-domestic wastes may have properties similar to these of exempted domestic wastes. In response EPA can only assume that such factors were not determinative in the Congress' creation of the exclusion." 45 Fed. Reg. 33098 (May 19, 1980).

EDF does not agree with the Agency's interpretation of Congressional intent. More important, however, to the instant discussion is that because of the existence of the exemption the interface between RCRA and the pretreatment program has not

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been fully explored. EPA has not determined whether the industrial categories contemplated for pretreatment regulation will fully cover the universe of hazardous waste generators in the RCRA program. Nor has EPA determined whether the pollutants of concern in the pretreatment program are inclusive of all the hazardous wastes identified pursuant to Section 3001 of RCRA. When one compares the Consent Decree to the RCRA program, there do appear to be significant differences. For example, the furniture and fixtures industry (SIC 25) is estimated to generate up to 54,000 metric tons of hazardous waste per year, but it is not listed as a point source category in the Consent Decree. The same is true for the petroleum re-refining industry (SIC 2992) which generates up to 218,000 metric tons of hazardous waste per year. In addition, the list of toxic constituents of concern, the presence of which can cause a waste to be listed as hazardous, is larger than the list of priority pollutants in the Consent Decree. See Appendix VIII, 45 Fed. Reg. 33132 (May 19, 1980).

Section 4 of the RCRA Reauthorization bill encourages the development of a data base on the RCRA-pretreatment interface. There is no study currently underway at EPA which will perform this function.

When this data base has been prepared, the information will then be available to enable Congress and EPA to address the loophole, if one exists. This may require modification of the pretreatment program, the RCRA program, or both.

In our view, Section 4 represents the absolute minimum which should be done regarding the domestic sewage exemption, since the provision fails to require that controls be placed on uncontrolled disposal, once identified. We urge you to support this important provision.

Sincerely,

David Lennett

David J. Lennett
Staff Attorney

DJL/js

ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES

June 1, 1982

The Honorable Robert Roe
Chairman, Subcommittee on Water
 Resources
Committee on Public Works and
 Transportation
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Association of Metropolitan Sewerage Agencies ("AMSA") is pleased to present its view on H.R. 6307, the "Resource Conservation and Recovery Act Reauthorization Act of 1982." AMSA is an association of 86 of the nation's major metropolitan agencies that provide wastewater treatment for over 70 million citizens.

While AMSA is generally supportive of the reauthorization and continued funding of the Resource Conservation and Recovery Act ("RCRA"), we wish to limit our comments to Section 4 of H.R. 6307. That provision would require the Administrator of EPA to report to the Congress on the mixture of hazardous wastes with domestic sewage in publicly owned treatment works ("POTW's"). Specifically, Section 4 would require an analysis of the types and quantities of hazardous wastes introduced into POTW's, and recommendations on whether the health and environmental effects of such mixtures are adequately regulated by other provisions of law. An interim report would be due one year from enactment, and a final report a year later.

Mixtures of industrial wastes and domestic sewage are currently exempted from most aspects of RCRA pursuant to the "domestic sewage exemption" of the act and regulations. Sewage sludge disposal practices remain subject to RCRA requirements in those limited situations where the sludge is determined to be hazardous pursuant to testing procedures of the regulations (the "Extraction Procedure Procedure Toxicity test").

AMSA has long supported exemption of POTW's in general and resultant sewage sludges in particular from the RCRA regulatory program. This position stems not from opposition to regulation per se, or any disregard for the potential health and environmental hazards posed by sewage sludge, but from fears, founded on experience, of overlapping and inconsistent regulation of POTW's under diverse and sometimes conflicting Federal statutes. It has been, and it remains AMSA's position, that POTW's should, to the maximum extent possible, be governed by provisions of the Clean Water Act.

Concern over the interface between hazardous wastes produced by industry, and the operation of POTW's into which those industries discharge, focuses on two general areas. First, adequate provision must be made for the protection of POTW facilities and equipment, plant personnel, and the general public while the mixtures of industrial and domestic wastes are being processed and treated. Secondly, the land, water and air must be properly protected from concentrations of priority pollutants in toxic quantities at both the "end of the pipe" POTW effluent discharge, and in sludge disposal practices.

With respect to the former, both the Federal Clean Water Act and various state and municipal laws already provide ample protections. Pursuant to the mandate of the Federal Act, large municipalities have developed extensive local "pretreatment" programs which, among other goals, prohibit the discharge into POTW systems of wastes which would damage or otherwise interfere with the operations of POTW plant and personnel. Even before Federal pretreatment requirements, most large municipal sewerage agencies operated under local ordinances which prohibited the discharge of wastes which would pose unreasonable hazards to plant operations. From a practical perspective, the regulatory requirements developed under RCRA can simply not be applied to large sewerage systems. A typical AMSA member will have hundreds of miles of pipe, thousands of manhole covers providing access to that network, and multiple sites at which mixed industrial and domestic wastes are transported, stored, processed, treated and discharged. It is simply not feasible to regulate systems of this nature in the same fashion as discrete industrial sites around which the RCRA regulatory scheme has been largely tailored and designed.

With respect to POTW effluent discharges, the Clean Water Act also provides a comprehensive scheme for protecting the environment. The combination of locally developed pretreatment programs, effluent limits on priority pollutants imposed through the NPDES permit program, and state water quality standards, operates to protect receiving waters from dangerous industrial wastes that may pass through the POTW treatment works. The fact that these Clean Water Act mechanisms are not fully operational in all municipalities, or that additional refinements are necessary to make them more effective on a site-specific basis, does not imply the need for regulation under yet another Federal statute.

With respect to sludge disposal, AMSA continues to believe that Section 405 of the Clean Water Act is the appropriate coordinating mechanism to assist municipalities in developing and selecting among sludge disposal options. From a practical standpoint, developing sludge disposal alternatives and siting facilities is already sufficiently complex without the added burden of labeling all sludge as "hazardous." In those rare instances where priority pollutants entering a POTW from industry (or oftentimes from other sources including simple stormwater runoff) became sufficiently concentrated in the sludge as to exceed Extraction Procedure Toxicity limits, municipalities should either arrange for disposal of those sludges in compliance with RCRA requirements, or, alternatively, go back to the source and regulate the influent sufficiently to render the resulting sludges non-hazardous.

AMSA, of course, supports further research by EPA and other entities into the health and environmental effects of priority pollutants which will contribute to continuing refinements in the municipal clean water program's ability to deal with those pollutants. EPA already has important work underway in this field. Particularly, the Office of WAter has been engaged in the sampling and analysis of priority pollutants at POTW's in forty (40) cities. Numerous AMSA agencies have cooperated in this project. Similarly, EPA's Municipal Technology Branch has worked with AMSA member cities to study the leaching of toxic materials from municipal sludge generally, and the efficacy of the Extraction Procedure Test in particular. AMSA wholeheartedly supports continued funding for these and similar research projects. We are concerned that a new study effort may simply duplicate or, worse, divert efforts and attention from work already underway in the Agency. Many of the questions which Section 4 would explore are extremely complex, requiring scientific evaluation and judgment after development of detailed research data. As such, they may not lend themselves to a quick, one or two year review. Accordingly in lieu of commissioning a report along the lines now called for by Section 4 of H.R. 6307, we urge Congress to provide continued funding for EPA's research efforts referenced above.

Regardless of whether the Congress decides to commission the report outlined in Section 4, or to defer to existing EPA research efforts under the Clean Water Act, AMSA's members and staff will be anxious to provide the expertise of large municipal agencies to these research undertakings. Should you or other members of the Committee have questions concerning these views, please contact Ron Linton, AMSA's Executive Director, at the AMSA National Office (202) 659-9161.

Respectfully submitted,

Joe Johnson
President

cc: Subcommittee and full
Committee members

H.R. 5617: COAST GUARD AUTHORIZATION

Mr. Roe. If we could have Capt. James Watt. Chief of the Bridge Administration Division, U.S. Coast Guard next.

Captain, we want to welcome you. As you know, the second phase of our work here this morning relates to H.R. 5617, which is a bill to authorize appropriations for the Coast Guard for fiscal years 1983 and 1984. This bill was deferred.

If you would proceed, thank you.

TESTIMONY OF CAPT. JAMES WATT, CHIEF, BRIDGE ADMINISTRATION DIVISION, U.S. COAST GUARD

Captain Watt. Thank you, Mr. Chairman. I have no prepared statement.

Mr. Roe. I realize that. But you understand what the issue in the bill is.

Captain Watt. Well, there are several issues in the bill.

Mr. Roe. OK.

Captain Watt. The first issue that may be of interest contains the definition of navigability of waterways as it pertains to issuing permits for bridges and this legislation would change that definition to eliminate the necessity of issuing bridge permits over waterways which are historically navigable but are not navigable in fact or susceptible to being improved to be navigable.

Mr. Roe. Who determines that in the bill?

Captain Watt. Excuse me, sir?

Mr. Roe. Who would determine that? In other words, as I understand it, it was historical in nature and so forth then it did not have to go through the process?

Captain Watt. Yes, sir. Normally the Coast Guard would determine the historical issue. The susceptibility to navigation, we ask the Corps of Engineers to make that determination for us.

Mr. Roe. All right. What is No. 2?

Captain Watt. The second part adds some provisions to the existing bridge laws that we do not presently have. One is it allows us to take action against the basically recreational pleasure boats that require draw bridges to be opened when they have unnecessary appertunances such as outriggers and antennas that could be lowered and therefore the bridge would not have to be opened. We do not now have authority to do anything about people who do that.

Also, we would ask to have the bridge laws amended to require that the bridge owner keep his bridge and the appertunances to his bridge in good repair. That is not now presently in the law. And as part of that, we would then ask for civil penalties for us to be able to enforce the provisions of the bridge accounts.

The penalties now are all misdemeanors and are basically unenforcable because the U.S. attorney just doesn't have the time to worry about those type of things.

Mr. **Roe**. Would you say that you would have the corps respond to you on the historic nature of the waterway?

Captain **Watt**. No, sir. We would look at the historic nature of the navigation. We would ask the corps to look at, is this waterway susceptible to being developed to be navigable.

Mr. **Roe**. OK.

That is a summation. Is the Coast Guard in favor of those?

Captain **Watt**. Yes, sir. We have been seeking this type of legislation for a number of years.

Mr. **Roe**. Are there any questions on this? The gentleman from Pennsylvania.

Mr. **Clinger**. We do have some questions on the Truman-Hobbs Act which we would like to submit to Captain Watt and ask him to respond for the record.

Captain **Watt**. I would be glad to.

[The questions and responses follow:]

(G-CC/104)
202-426-4280

16590

7 JUN 1982

Honorable John Paul Hammerschmidt
House of Representatives
Washington, D. C. 20515

Dear Mr. Hammerschmidt:

In reply to your 28 May 1982 letter to Captain James Watt, enclosed are responses to questions you asked to have answered for the record.

Sincerely,

W. T. LELAND
Captain, U.S. Coast Guard
Chief, Congressional Affairs Staff
By direction of the Commandant

Enclosure

1. QUESTION: Please describe the roles that the Coast Guard has had in bridge matters and what recommendations regarding these roles came from the "Roles and Missions" Study for the Coast Guard?

ANSWER: The roles of the Coast Guard in bridge matters, in order of significance, are: (a) the approval of the location and plans for bridges to be constructed across the navigable waters of the United States; (b) the regulation of the operation of drawbridges; (c) the regulation of bridge lighting as aids to navigation; and (d) the alteration of bridges determined to be unreasonable obstructions to navigation.

Among the conclusions of the "Roles and Missions" Study are:

1. Bridge Administration is a necessary function of government best performed by the Federal Government to preserve the public right of navigation and prevent interference with the interstate and foreign commerce of the United States.

2. The Coast Guard has administered the program effectively and both land and waterway transportation interests are satisfied with the fairness and objectivity of the Coast Guard's administration. There are selective opportunities for the use of Corps of Engineers and Federal Highway Administration personnel or state and local officials in accomplishing some aspects of bridge permit administration.

3. The Truman-Hobbs program for obstructive bridge modification has outlived its original purpose and may distort the formulation of benefit/cost analysis of some waterway projects.

2. QUESTION: There have been suggestions to either eliminate the Truman-Hobbs provision or transfer these functions back to the Corps of Engineers where they were before 1967. What is the Coast Guard's position on such an elimination or transfer?

ANSWER: The Coast Guard Roles and Missions Study report recommended that the Truman-Hobbs Act be repealed and bridge alteration be specifically included in waterway improvement projects. The Coast Guard concurs in the recommendation. The Coast guard would not oppose transfer of the Truman-Hobbs function to the CofE.

3. QUESTION: What use would the Coast Guard make of the $12.7 million authorized in H.R. 5617? For Truman-Hobbs bridge alterations?

ANSWER: The $12.7 million proposed, to be authorized by H.R. 5617, will be used to fund the Truman-Hobbs Act share of the alteration of the bridge across the Point Pleasant Canal at Point Pleasant, New Jersey. The part of the project involving construction of highway approaches is now under construction using Federal Highway Administration and state funds. The $12.7 million will be available in a timely fashion to fund the bridge cost obligations when the bridge work commences this year.

4. QUESTION: Would you please describe examples of the problems that the Coast Guard has had in bridge approvals where the waters involved have been navigable only for historical purposes? Are you satisfied that the legislation in H.R. 5617 adequately deals with this problem?

ANSWER: The problem of bridge approvals for waters being navigable only for historical purposes is twofold. In order to facilitate the bridge rehabilitation objectives of the Surface Transportation Assistance Act (STAA) of 1978, Section 144h of that Act excluded such waterways from Coast Guard jurisdiction having in mind that a major portion of the type of bridges to be rehabilitated would be over such waters if they crossed navigable waters under Coast Guard jurisdiction. Delays in processing Coast Guard approvals would be eliminated. This, however, created an inequitable anomaly in that bridges constructed over the same waterway, not funded under the STAA, required Coast Guard approval. The permit requirement is inequitable when determined solely by the funding source. The waterways, navigable only by reason of historic use and not presently being used for foreign and interstate commerce, have no legitimate navigation interest to be served. The Coast Guard, nonetheless under present law, must conduct the same procedures and expend the same resources as are necessary for waterways in actual use. A useless exercise results placing a needless burden on the applicant, the general public and the Coast Guard resources. So long as the wording of H.R. 5617 is not changed, remaining the same as found in the STAA, the objectives will be adequately served.

5. QUESTION: In the Second Coast Guard District alone, there are eleven bridges which are potential candidates for alteration or relocation under the Truman-Hobbs Act. In addition, the subcommittee understands that (bridges) in the New York/New Jersey area have been identified as obstructive and possible candidates under the Act. Is the Coast Guard presently conducting any investigations of bridges which have been cited as obstructive to navigation? If not, why are such investigations not being pursued? What is the Coast Guard doing about investigations that have been completed and sent to Headquarters for action?

ANSWER: The 11 bridges referred to in the Second Coast Guard District and several bridges in the Third Coast Guard District, are bridges that have been identified by the district staff, for planning purposes, as possible candidates for preliminary investigations whenever district resources will allow. While these bridges do present some difficulty for navigation, the likelihood of identifying sufficient benefits to produce a favorable cost/benefit ratio is remote. In view of the substantial backlog of funding requirements ($85 million), all field investigations have been halted to allocate the already reduced field resources to processing of bridge permit approvals and drawbridge operation regulations. The Coast Guard has three district reports in Headquarters for completion and final action.

6. QUESTION: The Coast Guard's Roles and Missions Study states that the original purpose of the Act — the alteration of obstructive bridges — has been fulfilled. In contrast to the Roles and Missions Study, the March 1 Congressional Research Service (CRS) Report on the Coast Guard says that there is a current backlog of cases requiring investigation to determine if those bridges are unreasonably obstructive to navigation and subject to removal or alteration under the Act. The CRS Report also justifies retention of the program in light of vessel size increases and additional development of ports to accommodate increased foreign and domestic commerce. Why are the findings of these two studies so dissimilar? Please comment on the CRS Report findings.

ANSWER: As stated in the above question, the backlog consists of bridges which have been identified, for planning purposes, as possible candidates for preliminary investigation. Vessel sizes have not increased on the Inland Waterways, nor do we expect any such increase. As ports are developed, increasing the bridge dimensions should be considered as part of the port development process and the cost included in the Waterways Improvement Authorization. In the two-year period subsequent to the data contained in the CRS Report, one order to alter has been issued and three investigations have been concluded with findings that the bridges were not an unreasonable obstruction to navigation. The CRS Report was prepared from documents used to form the foundation for the near term budget requests, while the Roles and Missions Study was based on current factual information.

7. QUESTION: The members of this Subcommittee are acutely aware of the limited federal dollars available to spend on an even more limited number of programs. The Truman-Hobbs Act provides a so-called "automatic authorization" for bridges which have qualified under the Act. Do you believe that expenditures under the Truman-Hobs Act may best be controlled through the appropriations process rather than blanket repeal of the federal cost sharing mechanism?

ANSWER: The Coast Guard does not agree that Truman-Hobbs Act expenditures may best be controlled through the appropriations process. This does not represent any change as the Coast Guard would still have to maintain the resources to investigate obstructive bridge cases, issue orders to alter and seek appropriations for each order issued.

8. QUESTION: The recently-released Coast Guard Roles and Missions Study states, "The original purposes of the Truman-Hobbs Act of 1940 in providing for the alteration of unreasonably obstructive bridges have been fulfilled." What is the basis for that conclusion? The Senate Committee on Commerce, Science, and Transportation, in its report on the 1983 and 1984 Coast Guard Authorization Bill, reaches the opposite conclusion (Quote: "There is no question that a large number of bridges, private and public, require alterations for rebuilding."). Would you comment on this difference in views?

ANSWER: The Coast Guard does not agree that there is a difference in views or holds a conclusion opposite to the Senate Committee. There are only a few bridges which could be found to be unreasonable obstructions to navigation for Truman-Hobbs Act purposes. There are many bridges which are obsolete, structurally deficient, in need of rehabilitation, etc., apart from the singular aspect of the Truman-Hobbs Act.

9. QUESTION: In Admiral Bauman's testimony before the Coast Guard and Navigation Subcommittee on June 16, 1981, he discusses the Truman-Hobbs program as follows: "Again, there is tremendous competition for the three or four bridges that we are able to handle." How do you reconcile this with the view that the program's usefulness is outlived?

ANSWER: Admiral Bauman's testimony on June 16, 1981 should be taken in the context of competition for funding and the time frame. Competition pressure from navigation interests, bridge owners and their political supporters is always present to fund and commence work on certain bridges ahead of others. We do not see any correlation between competition for limited funds in 1981 to alter a particular bridge ahead of another and the subsequent Roles and Missions Report in 1982 that the Truman-Hobbs Act has outlives its usefulness.

Mr. **Clinger.** Mr. Chairman, I do have a question for the Corps of Engineers. Could we invite them to come forward?

Mr. **Roe.** Would the corps come and sit down. I know the corps and the Coast Guard talk to each other so if you don't mind sitting with us we would appreciate it.

Mr. **Clinger.** I just have one question for you. Section 8 limits the application of bridge requirements to certain situations. Could you explain your understanding of the intent and effect of that provision, especially the use of "and" rather than "or" for situations in which the requirements would apply?

TESTIMONY OF MR. DUSCHA AND MR. ALLEN—RESUMED

Mr. **Duscha.** Mr. Allen, the Assistant Counsel, will answer that question, sir.

Mr. **Allen.** Yes, sir. I believe section 8 is intended to amend pertinent authorities on bridges to implement the change in authority that the captain just addressed. That is, to remove the so-called historic test of navigability so that, under the various acts on authorization of bridges, neither the Congress, the Department of Transportation, or the Corps of Engineers would regulate bridges that are to be constructed over waters of the United States that are navigable solely because of an historic test of navigability. There are four tests, judicially established for navigable waters of the United States. One being the salt water: The ebb and flow of the salt water tide, which was the English common law type of navigability; everything affected by the ebb and flow of the tide. Two, three, and four being "is presently navigable, could be reasonably improved to be navigable or has a history of navigability."

I think that it is the intent of this bill to remove the requirement for approval for bridges over navigable waters that are solely navigable due to a history of navigability. There are a considerable number of waterways that are fairly obscure today that are navigable under that test because, for example, fur trade in canoes may have passed over the waterways. That is the intent of section 8 as I understand it.

Mr. **Clinger.** I was just going to ask the captain if that was his understanding.

Captain **Watt.** Yes, sir.

Mr. **Allen.** As to effect of the provision, sir, I suggest that your legal counsel carefully review the conjunctive "and" at various points in section 8.

The language provides that the authority shall not apply to any bridge or causeway over the waters which are not subject to the ebb and flow of the tide and which are not used, or susceptible to be used in their natural condition or by reasonable improvements, as a means to transport interstate or foreign commerce.

My technical problem, as a lawyer, is with a conjunctive "and". It might be read in plain language, that the only bridges the United States would regulate are those over salt water which meet the two tests; ebb and flow of the tide and ability to carry transportation. It might rescind the authority of the United States to regulate bridges over inland, fresh water waterways that are presently navigable or capable of navigation.

I believe that the language in H.R. 5617 is slightly different from the language in the report of the Merchant Marine and Fisheries Committee. The latter more accurately reflects what it intends.

Mr. CLINGER. Thank you.

Mr. ROE. The gentleman from Illinois.

Mr. FARY. Thank you, Mr. Chairman.

Captain Watt, a proposal is being considered to transfer authority under the Truman-Hobbs Act to order and federally fund the alteration of bridges which are obstructions in navigation from the Coast Guard to the Corps of Engineers.

Would you favor such a proposal? If not, why not?

Captain WATT. The Department of Transporation and the Coast Guard would favor such a proposal although our first recommendation in the Coast Guard roles and missions study was to repeal the act. We would also favor transfer studies not to be repealed.

Mr. FARY. Would the corps please answer that question?

Mr. ALLEN. The Corps of Engineers does understand, sir, that a proposal may be introduced to transfer the responsibilities under the Truman-Hobbs Act from the Department of Transportation and the Coast Guard to the Corps of Engineers.

In anticipation of being asked to comment on that legislation, the Corps of Engineers is preparing a position for consideration and clearance by the administration. It will be my personal recommendation to the Chief of Engineers and to the Corps of Engineers to oppose that transfer for at least two reasons. The Truman-Hobbs Act, which this present bill does not amend or modify in any way, as reported out by the Merchant Marine and Fisheries Committee, governs alteration or removal of existing bridges that pose obstructions to navigation.

Determinations under the Truman-Hobbs Act affect not only water navigation interests but also bridge owners, highway and railroad traffic interests and a variety of other interests to include cities located on either side of such bridges. It is my belief that a mix of transportation impacts and decisions are involved that are best addressed by a Department of Transportation.

I am also aware that the Truman-Hobbs Act presently contains a United States cost-sharing program for the affected bridge owner. This Federal cost-sharing program is in lieu of the no-compensation rule of the navigation servitude that might otherwise be brought to bear.

That cost-sharing program and the administration of that program requires funds and people. I understand that there may be a lack of necessary funds and people in the Department of Transportation to readily administer this program but it does not follow, to me, that transferring the program to the Department of the Army, where there may be a similar lack of funds and people is a viable solution to whatever problems may be posed.

Those, sir, will be my personal recommendations to the Corps of Engineers. The Corps of Engineers will develop its position for consideration by the administration.

Mr. FARY. Thank you very much.

Thank you, Mr. Chairman.

Mr. ROE. Are there any further questions?

If not, the committee will recess and for the benefit of the members, we will convene tomorrow morning at 8:30 in this room to mark up the bill we just discussed. Thank you very much for your patience and your time.

[Whereupon, at 1:10 p.m., the subcommittee recessed, to reconvene at 8:30 a.m., Thursday, May 27, 1982.]

ADDITION TO THE RECORD

WASHINGTON
EXECUTIVE
OFFICES

THE AMERICAN WATERWAYS OPERATORS, INC.

1600 Wilson Boulevard
Arlington, Virginia 22209
(703) 841-9300

Anthony L. Kucera, President

May 25, 1982

Hon. Robert A. Roe
Chairman
Subcommittee on Water Resources
House Public Works and Transportation Committee
Washington, D. C. 20515

Dear Mr. Chairman:

The American Waterways Operators, Inc. (AWO), the national trade association representing the inland and coastal barge and towing industry, appreciates the opportunity to comment on H.R. 5617, legislation authorizing FY 83-84 appropriations for the Coast Guard and other purposes, which the Subcommittee on Water Resources will consider May 26.

AWO supports H.R. 5617, as approved by the House Merchant Marine and Fisheries Committee April 28, 1982. AWO testified March 24, 1982 before that Committee's Coast Guard and Navigation Subcommittee in support of H.R. 5617, with the exception of Section 8 of the legislation which would have eliminated federal cost-sharing for the Truman/Hobbs bridge alteration program. Section 8 was subsequently deleted from H.R. 5617 during full committee markup by adoption of an amendment offered by Rep. Billy Tauzin, thereby leaving intact the funding provisions of the Truman/Hobbs Act which has been on the books since 1940.

Upon establishment of the Department of Transportation in 1967, the Coast Guard became responsible for the administration of bridges over navigable waters of the U.S., a function previously assigned to the U.S. Army Corps of Engineers. Under its Bridge Administration Program, the Coast Guard carries out three functions: bridge alteration approval, bridge permitting, and regulation of drawbridges. Since assuming the responsibility for bridge alteration, the Coast Guard has assisted in the alteration of 18 bridges for a total of $87.6 million in federal funds through January 1981.

Bridge clearances over navigable waterways are critical for waterway traffic. The vertical clearance of the span and the horizontal clearance affect both vessel operation and the design of vessels. Many obstructive bridges were built around the turn of the century, before there was effective regulation of clearances. Federal law now requires that bridges over certain navigable waterways be constructed only with a permit from the Department of Transportation specifying the horizontal and vertical clearances of the principal spans. In other cases, however, the progress of waterway transportation has made the clearances obsolete.

The Truman/Hobbs Act allows the federal government to provide funds for removal or modification of certain obstructive bridges. It is the only means by which private railroad or public highway bridge owners can obtain federal assistance in the alteration or reconstruction of bridges found to be unreasonably obstructive, and therefore hazardous to navigation.

As long as the Truman/Hobbs Act remains in effect, there should be a continuation of effort within the Department of Transportation to see its intent is carried out.

The Administration's budget request for the Coast Guard for FY 1983 contains no funding for bridge alteration programs, reflecting the Executive Branch's funding and program priorities for the fiscal year. Executive budget requests and Congressional budget actions, we believe, are the proper procedural manner to control federal expenditures under the Truman/Hobbs Act, rather than blanket repeal of the authorization. In addition, we believe that leaving the statute unchanged retains the flexibility for federal response should bridge alteration be required for navigation safety, in both emergency and non-emergency cases.

Recognizing the limited resources of the Coast Guard to perform its multimission function, AWO has no objections to the transfer of the Truman/Hobbs bridge alteration program from the Coast Guard back to the Corps of Engineers, as long as provisions of the statute remain unchanged.

Once again, Mr. Chairman, thank you for the opportunity to express our views on H.R. 5617 and we respectfully ask that the enclosed position paper, dated April 22, 1982, be included for the record with this statement.

Sincerely,

Anthony L. Kucera
President

Enclosure

April 22, 1982

THE AMERICAN WATERWAYS OPERATORS, INC.
POSITION PAPER ON REVISIONS TO THE TRUMAN/HOBBS ACT UNDER H.R. 5617

H.R. 5617, a bill to authorize appropriations for the Coast Guard for fiscal years 1983 and 1984, was approved by the House Coast Guard and Navigation Subcommittee on April 1 and is scheduled for markup by the full House Merchant Marine and Fisheries Committee on April 28.

Section 8 of H.R. 5617 would eliminate federal funding for bridge alteration costs attributable to navigation under the Truman/Hobbs Act, which has been on the books since 1940. The Act allows the Federal government to provide funds for removal or modification of certain obstructive bridges. It is the only means by which private railroad or public highway bridge owners can obtain federal assistance in the alteration or reconstruction of bridges found to be unreasonbly obstructive, and therefore hazardous to navigation.

Upon establishment of the Department of Transportation in 1967, the Coast Guard became responsible for the administration of bridges over navigable waters of the U.S., a function previously assigned to the U.S. Army Corps of Engineers. Under its Bridge Administration Program, the Coast Guard carries out three functions: bridge alteration approval, bridge permitting, and regulation of drawbridges. Since assuming the responsibility for bridge alteration, the Coast Guard has assisted in the alteration of 18 bridges for a total of $87.6 million in federal funds through January 1981.

The elimination of federal cost-sharing raises several questions regarding the viability of the remaining portions of the Truman/Hobbs Act.

Title 33, section 512, of the United States Code states "No bridge shall at any time unreasonably obstruct the free navigation of any navigable waters of the United States." Many of the bridges which have been altered under the provisions of Truman/Hobbs were built around the turn of the century. Clearly, commercial navigation requirements have changed since that time.

33 U.S.C. 513 requires the DOT Secretary to issue and cause to be served upon interested parties an order requiring such alterations of bridges as he finds to be reasonably necessary for the purposes of navigation.

33 U.S.C. 514 requires a bridge owner to prepare and submit to the Secretary, within a reasonably time, general plans and specifications to provide for the alteration of such bridge in accordance with such order. It further states that when the Secretary shall have approved the general plans and specifications, they shall be final and binding upon all parties unless changes therein be afterward approved by the Secretary and the bridge owner.

33 U.S.C. 515, which would be repealed under H.R. 5617, contains directions to the bridge owner to proceed with the work of alteration. It further discusses cost-sharing between United States and the bridge owner.

Therefore, what remains of the Act is in effect everything which would lead up to the order to the bridge owner to alter his bridge without any participation in the funding of the bridge by the federal government.

The remaining portion of 33 U.S.C. 516 would provide for equitable contributions from any interested person, firm, association, corporation, municipality, county, or state desiring alteration or relocation for reasons other than the bridge being unreasonably obstructive. Thus, it would appear that the bridge owner will be required, under Section 8 of H.R. 5617, to fully bear the costs of alteration or relocation when the work is to be accomplished for navigation purposes.

Bridge clearances over navigable waterways are critical for waterway traffic. The vertical clearance of the span and the horizontal clearance affect both vessel operation and the design of vessels. As stated above, many obstructive bridges were built around the turn of the century, before there was effective regulation of clearances. Federal law now requires that bridges over certain navigable waterways be constructed only with a permit from the Department of Transportation specifying the horizontal and vertical clearances of the principal spans. In other cases, however, the progress of waterway transportation has made the clearancesobsolete.

Although the Coast Guard's Roles and Missions Study states that the original purpose of the Act - the alteration of obstructive bridges - has been fulfilled, there are eleven bridges in the Second Coast Guard district identified as candidates for alteration under provisions of the Truman/Hobbs Act. Preliminary or final reports have been sent to Coast Guard headquarters on seven of these bridges. There are a number of other bridges which have been studied by the Coast Guard or have been identified by navigation interests as hazardous.

In contrast to the Roles and Missions Study, the March 1, 1982 Congressional Research Service report on the Coast Guard, prepared at the request of Senate Commerce Committee Chairman Bob Packwood (R-OR) and Rep. Don Young (R-AK), ranking minority member of the House Coast Guard and Navigation Subcommittee, says there is a current backlog of cases requiring investigation to determine if those bridges are unreasonably obstructive to navigation and subject to removal or alteration under the Truman/Hobbs Act. The report also justifies the program in recognition of vessel size increases and development of ports to accommodate increased ocean traffic and domestic commerce.

It follows that those bridges which have been issued ordersto alter and those bridges which may be issued orders to alter based on investigations would be required to be altered by the bridge owners. However, in view of the DOT/Coast Guard's evident reluctance to carry on with its responsibilities under the Act, as outlined in Commandant Notice 16590 dated January 27, 1982, we question whether or not those bridges will ever be altered under present policy directives.

As long as the Truman/Hobbs Act remains in effect, there should be a continuation of effort within the Department of Transportation to see that the intent of 33 U.S.C. 512 is carried out.

The need to continue this program was recognized by Major General E. R. Heiberg III, Director of Civil Works for the Corps of Engineers. In a January 26, 1982 letter to Deputy Secretary of Transportation Darrel M. Trent, Gen. Heiberg said "...it is premature to predict that all obstructive bridges in the United States have been altered to satisfy the country's navigational requirements.

"It should also be remembered that Congress has not passed a waterway project omnibus bill since 1976," he added. "Because of this, many U.S. waterways will not be improved in the near future, while commercial traffic will continue to increase to maintain the economic vitality of our country. From our experience and from the present trends described, it is justifiably predicted that the Truman/Hobbs authority will be required in the future. Even if there were no foreseeable applications of the Truman/Hobbs Act, this statute should be retained to provide the capability to respond to the situations for which it was designed, should they arise." Gen. Heiberg further advised against repeal of the financing portion of the Truman/Hobbs Act.

The Administration's budget request for the Coast Guard for FY 1983 contains no funding for bridge alteration program, reflecting the Executive Branch's funding and program priorities for the fiscal year. Executive budget requests and Congressional budget actions, we believe, are the proper procedural manner to control federal expenditures under the Truman/Hobbs Act, rather than blanket repeal of the authorization, as Section 8 of H.R. 5617 would do.

AWO asks Congress to ensure that the Truman/Hobbs funding mechanism remain intact and available to respond to shifts in federal priorities. In addition, leaving the statute unchanged retains the flexibility for federal response should bridge repairs be required for navigation safety, in both emergency and non-emergency cases.

The American Waterways Operators, Inc. (AWO) is the national trade association representing the inland and coastal barge and towing industry, as well as small to medium sized shipyards serving the industry.